



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Consultants on Family Addiction

File: B-274924.2

Date: February 21, 1997

Hubert J. Bell, Jr., Esq., Smith, Currie, & Hancock, for the protester.
Bruce A. Denning, Esq., and Michael J. Shea, Esq., Sutherland, Asbill & Brennan, for Atlanta Psychological Associates, an intervenor.
Roberta M. Echard, Esq., Administrative Office of the United States Courts, for the agency.
Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of awardee's technical proposal as superior to protester's, based in part on staff capabilities, is reasonable and fully supported by the record. In view of unobjectionable evaluation, protester's bias allegations fail to establish that agency acted with intent to injure the protester.

DECISION

Consultants on Family Addiction (COFA) protests the award of a contract to Atlanta Psychological Associates (APA) under request for proposals (RFP) No. 113E-97-01, issued by the Administrative Office of the United States Courts (AOUSC) for treatment services for federal defendants and offenders.

We deny the protest.

The AOUSC is authorized to contract with appropriate agencies or persons for services including drug testing and care for offenders who are alcohol or drug-dependent, or suffering from psychiatric disorders. The services to be obtained under this solicitation include drug testing and out-patient treatment counseling services in Fulton County, Georgia. The RFP contemplated award of a fixed-price service contract for a base year with two 1-year options. Award was to be made to the offeror whose proposal was most advantageous to the government based upon consideration of the stated evaluation criteria.

Proposals were evaluated on the basis of four criteria, listed in descending order of importance: Quality of Services (50 percent); Price (25 percent); Experience and Reputation (15 percent); and Geographic Location (10 percent). All criteria but

price were numerically scored based upon the evaluation of the proposals. The price score was calculated by ranking the proposals from lowest to highest price with the lowest-price proposal receiving 25 points and the remaining proposals receiving a proportionately lower number of points.

Fifteen offerors, including COFA and APA, submitted proposals by the closing date in July 1996. The agency evaluated the proposals, conducted discussions with all offerors, and provided them the opportunity to correct identified deficiencies in best and final offers (BAFO).

COFA was an incumbent subcontractor for these services in Fulton County and an incumbent contractor under three other contracts in counties surrounding Atlanta, Georgia. Prior to the submission of proposals, COFA had advised one of its counselors that she would no longer be employed by COFA at the end of the current contract period, September 30. At that time, COFA and the counselor agreed that, as of June 1, she would work for COFA as an independent contractor. Subsequently, that counselor agreed to work with APA in submitting a proposal for this and other AOUSC procurements. Shortly after the submission of BAFOs, COFA's principal learned that this counselor had submitted a competing proposal and terminated her contract on September 5. COFA's principal advised the agency that the termination was for performance deficiencies and alleged that the counselor had access to COFA's proposal and pricing.

The agency investigated the allegations against the counselor and determined that they had no effect on the procurement. In this regard, they found that there was no evidence that the counselor had actually looked at COFA's proposal or pricing and that she would have no need to look at them since, based on her experience as a COFA counselor, she knew how the treatment program worked, the Probation Office's philosophy, and what the contract requirements meant in terms of actual work load.¹ Based on the agency's experience with the counselor's good

¹We reach the same conclusion from our review of the record. While COFA states that its principal also discussed the COFA proposal with the counselor, the counselor denies the allegation. Apart from the allegation, there is no evidence that the counselor ever discussed the proposal with COFA or otherwise was aware of its contents. Further, our review of the technical proposals provides no indication that APA used information from COFA's proposal in preparing its own technical or price proposal. In this regard, we note that the RFP disclosed the incumbent's pricing for the same services and COFA proposed pricing which was appreciably higher than the incumbent's pricing. While COFA argues that APA received a significant advantage from knowing COFA's proposed price, we believe that APA's decision to propose pricing lower than the incumbent's simply reflects appropriate business

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performance record and the absence of corroborating evidence, the agency also concluded that the allegations of poor performance were baseless.

After receipt of BAFOs the agency evaluated the proposals, resulting in the following final scores:

Offeror	Quality (50)	Price (25)	Experience (15)	Location (10)	Total (100)
COFA	40	16.2	14	8.5	78.7
APA	44	25	14	8.5	91.5

In making his award determination, the source selection authority noted that APA offered a qualified staff and quality services to the clients at the lowest price of all offerors. He found that APA had proposed a location central to Fulton County which was close to public transportation. He also noted that APA's proposal had the highest overall score using the criteria established for quality of service, experience, and geographic location. Accordingly, he awarded the contract to APA. After receiving notice of the award, COFA filed a protest with our Office, and then supplemented it after reviewing the agency report.²

In its supplemental protest, COFA identified a number of areas in which it believes the agency improperly scored APA's proposal. In COFA's view, but for the agency's evaluation bias in favor of APA and against COFA, it would have received the highest proposal score.

In reviewing the evaluation, it is not the function of our Office to evaluate the proposals de novo. Rather, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter of administrative discretion. Information Sys. & Networks Corp.,

¹(...continued)
judgment and does not indicate that APA knew of, or obtained any advantage from, COFA's pricing.

²COFA's original protest alleged that the APA counselor, its former employee and independent contractor, had allegedly made material misrepresentations about proposed personnel and had used her access to COFA's proposal in preparing APA's proposal. We dismissed this protest because it lacked any factual basis and concerned a dispute between third parties which our Office does not review.

69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203; Advanced Technology and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230. From our review of the record, we find neither evidence of any specific intent to injure the protester nor any other basis to object to the agency's evaluation.

For example, under the first evaluation criterion, quality of services, the agency evaluated proposals on the basis of six factors, listed in descending order of importance: capacity to perform; proposed approach; quality of staff; ability to provide the range of services; treatment philosophy; and physical plant. Both proposals were scored the same under four of the six factors. APA's proposal was rated higher than COFA in the areas of capacity to perform and quality of staff. COFA argues that APA was not entitled to a higher score under either factor because APA did not have experience in Fulton County or elsewhere performing these treatment contracts. COFA raises the same objections with regard to the agency's evaluation of APA under the experience and reputation criterion, noting that APA received undue credit for the (limited) experience of COFA's former counselor.

While APA had not performed these contracts before, the agency found that the offeror had the capacity and experience to provide the services, in part based on the experience of COFA's former counselor who had performed the same services under COFA contracts. As a result of her experience under the COFA contracts, the counselor was familiar with assessments, individual and group counseling, supervision of group co-leaders, preparing reports, case management, administering urine tests, reporting results, maintaining client files, and overseeing the general functioning of services in various county offices. There is nothing improper in evaluating an offeror's capacity to perform services based on the experience of those who will perform those services. See S.C. Jones Servs., Inc., B-223155, Aug. 5, 1986, 86-2 CPD ¶ 158. Further, the counselor in question has 17 years of experience, primarily in the field of substance abuse treatment including administrative experience gained from positions she held before working for COFA. In addition, APA's principal has been providing clinical services for 19 years, is on the staff of several area hospitals, has performed contract services for juvenile courts in four Georgia counties for some 13 years, and was a full professor at the Georgia School of Professional Psychology. COFA argues that the size of the contract awarded to APA is greater, and thus more complex to perform, than that actually performed by its former counselor under the COFA contracts. However, while contract size may be relevant to contract complexity, the fact that the contract to be awarded is larger in size does not necessarily mean that the larger contract is more complex. See PMT Servs., Inc., B-270538.2, Apr. 1, 1996, 96-2 CPD ¶ 98. Here there is ample evidence in the record to support the agency's assessment that APA possesses the capacity and a well qualified staff to perform the level of complexity in the awarded contract.

COFA also challenges the agency's evaluation of its former counselor's qualifications because it did not reflect the poor performance of that counselor which ostensibly led to COFA's termination of the counselor's contract. In this regard, COFA alleges that the counselor's deficient performance included her refusal to lead group counseling sessions for 6 weeks in July and August 1996, and her refusal, after returning from a vacation, to adjust her lunch hour to see a counseling client. As discussed above, the agency investigated these matters prior to making the award and found them to be without basis. In this regard, when COFA did not identify the client in question, the agency contacted the only probation officers in the Atlanta office who had clients in counseling with COFA. Neither of these probation officers was aware of the counselor's refusal to handle any counseling sessions and identified another COFA counselor as being responsible for handling the group sessions.

In addition, the counselor has submitted affidavits here which explain the allegations. The counselor states that at the end of June 1996, COFA's principal determined that she would no longer be responsible for conducting the group counseling sessions in Fulton County; a COFA employee already working with the group would conduct them resulting in a cost savings to COFA. The counselor also denies that she ever refused to adjust her lunch hour to accommodate a client who required immediate assistance. She explains that upon returning from a vacation on September 3, COFA's principal requested that she see two clients. She was unable to reach either by telephone at first. She planned to meet with one of the clients the next night, until she learned that the client had already arranged to meet a different counselor. She continued in her attempts to reach the other client until COFA terminated her contract on September 5.

While COFA argues that the client the counselor refused to see was different from the ones accounted for by the counselor and the agency's investigation, it has submitted nothing, apart from the allegation itself, to substantiate this argument. Accordingly, on this record, we have no basis to question the agency's conclusion regarding the counselor's alleged poor performance.

COFA also contends that the agency's evaluation of APA's physical plant and facility under the quality of services and geographical location criteria was flawed. In this regard, COFA argues that its facility is closer to the Fulton County probation office, is more accessible to public transportation, and is in a safer area than APA's facility. COFA's arguments are based on its understanding that APA's sole facility is located some 13 miles away from the probation office. However, in addition to that location, APA proposed a location approximately the same distance away from the probation office as is COFA's facility, and which has comparable transportation accessibility. Thus, there is no basis to object to the agency's evaluation of APA's proposal under these evaluation factors.

We reach the same conclusion with regard to COFA's contentions that the agency's evaluation of its proposal was flawed. In this regard, the agency scored COFA's proposal lower than APA's under the quality of services and price criteria. Otherwise, the two proposals received identical scores. While COFA neither objects to its score under the price criterion nor claims that it should have received a perfect technical score, it does complain that it should have received higher scores under many of the evaluation factors. However, it has not established that it was entitled to a higher score.

For example, COFA argues that it was improper to score its proposal lower than APA's under the "capacity to perform" and "quality of staff" factors based on its successful past experience in Fulton County. As observed by the agency, COFA's experience in Fulton County was attributable to the successful performance of COFA's former counselor, who is now working for APA. Those proposed to work for COFA under the new contract did not have as much experience in Fulton County as the former counselor and COFA had experienced a number of personnel turnovers in the months leading up to the award determination. According to the agency, Fulton County offender-clients tend to have a lower economic status, to have more serious addiction problems, and to have more difficulty in performing normal thought processes, than do offenders in other counties where COFA had performed. Consequently, the agency scored COFA's proposal slightly lower than APA's proposal based on the particular experience possessed by COFA's former counselor. In sum, the record provides no basis to object to the agency's evaluation of COFA's proposal.³

The protest is denied.

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³Since we find no error in the evaluation of either APA's or COFA's proposals, we have no basis to conclude that the agency acted with a specific intent to injure COFA or that the evaluation unfairly affected the protester's competitive position. Hill's Capitol Sec., Inc., B-250983, Mar. 2, 1993, 93-1 CPD ¶ 190. Moreover, even if COFA's proposal had received a perfect technical score (75 points), COFA would not be in line for the award. Due to COFA's high proposed price, it received one of the lowest price scores (16.2 points). Its combined score of 91.2 points would still be lower than APA's combined score of 91.5 points, and the agency explains that APA's proposal would remain the most advantageous to the government.