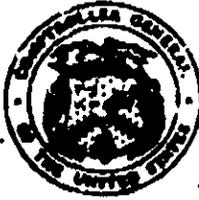


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Tyler Przybylak
Proc. II

DECISION



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

FILE: B-187982

DATE: April 4, 1977

MATTER OF: Checchi and Company

DIGEST:

1. Despite erroneous coding of procurement as one for research and development (R&D), statute governing evaluation of proposals leading to award of R&D contract is not applicable where procurement is actually for support services.
2. Evaluation of revised proposals by some but not all of those who evaluated original proposals, without discussion among evaluators of their respective judgments, is not contrary to applicable regulations or otherwise improper.
3. Where offeror's lack of "biomedical" research experience is identified as proposal weakness, there has been no change from evaluation criteria expressed in terms of general scientific experience since there is direct correlation between stated weakness and more general evaluation criterion.
4. When discussions are held with offerors in competitive range, agency in most cases is required to inform offerors of all deficiencies and weaknesses in their respective proposals. Requirement extends to offeror whose proposal, as initially evaluated, is acceptable despite existence of some deficiencies, since offeror should be given opportunity to improve its proposal.
5. Although agency's failure to point out specific deficiency to offeror was improper, award will not be disturbed where it appears that offeror was not materially prejudiced in view of significant technical and cost differences between it and successful offerors.
6. Record does not support allegation that agency treated certain aspects of competing proposals as deficiencies in one of them but not the other.

Checchi and Company (Checchi) protests the award of contract No. 1-CP-65759 to Enviro Control, Inc. by the National Cancer Institute (NCI), Department of Health, Education, and Welfare (HEW). Checchi alleges numerous improprieties in the procurement which, it suggests, reflect a bias in favor of the successful offeror.

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The procurement was initiated by the issuance of request for proposals (RFP) No. N01-55710-68, which called for offers to furnish technical and managerial support to NCI's Diet, Nutrition and Cancer Program (DNCP) on a cost-plus-fixed-fee basis. Of the seven offers received, five, including the protester's, were considered to be in the competitive range. Each of the five offerors in the competitive range was requested to make an oral presentation, subsequent to which offerors were furnished letters pointing out deficiencies in their proposals. Revised proposals were then submitted and evaluated, and Enviro Control was selected on the basis of its high technical rating and lowest proposed costs.

Checchi alleges that the technical evaluation panel was not properly constituted, that its revised proposal was not properly considered by the panel, that the evaluation criteria of the RFP were not adhered to, that it was not informed of the major deficiencies in its proposal, and that numerous factual errors with respect to its proposal were made by the evaluators.

We have thoroughly reviewed the record in this case, including the detailed documents submitted by Checchi. We find, as HEW has recognized, that there were some procedural deficiencies associated with this procurement. However, we also find that the deficiencies were not prejudicial to Checchi and, for the reasons set forth below, that the record overall does not establish that the award to Enviro Control was improper.

A. Composition and Conduct of the Technical Evaluation Panel

Checchi first alleges that the technical evaluation group was not constituted in accordance with 42 U.S.C. § 289c-4 (Supp. V 1975), which (in the protester's view) requires that research and development contract proposals be reviewed by a Contract Review Committee not more than 25 percent of whose members are officers or employees of the United States. Protester notes that the the "DNCP procurement files contain a computer input form designating the contract awarded to Enviro Control as a Research and Development Contract," but that the evaluation panel was composed entirely of Government personnel.

HEW points out that the effort sought was not research and development, but rather was in the nature of support services, as evidenced by the following description of work contained in the RFP:

"The objectives of this contract are to provide technical and managerial support to the DNCP-NCI. The contractor will function in a purely

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supportive role, carrying out specific tasks. The contractor will be responsible for assisting in the management and administration of the DNCP and will prepare and monitor budgets, perform program analysis and evaluation, and provide support and logistics services."

HEW further states that the Contract Data Code Sheet was merely erroneously coded "RD" and that such coding can not turn this procurement into one for research and development.

We agree. It is clear that this was not a research and development procurement, and we therefore see no relevance to the statutory requirements with respect to this procurement.

Checchi next complains that its revised proposal was not evaluated properly because it was not thoroughly reviewed by each member of the technical evaluation group and because the group did not meet to discuss the revised proposals.

The record shows that of the six evaluators who reviewed the initial proposals, four also reviewed and evaluated the revised proposals. A fifth evaluator was unable to prepare a complete written evaluation of the proposals because of official travel but was able to evaluate the staffing aspects of the revised proposals and to report his scoring of that evaluation area by telephone to the contract specialist at NCI. The sixth evaluator was prevented by illness from reviewing the revised proposals. The evaluators did not meet as a group to discuss the revised offers.

We are not aware of any regulatory requirement which was contravened by HEW's evaluation approach. The Federal Procurement Regulations (FPR) contain no requirement that all initial proposal evaluators review and evaluate revised proposals or that the evaluators get together to discuss their respective judgments. Neither do we find such a requirement in the HEW Procurement Regulations, 41 C. F. R. Subpart 3-3.51 (1976), referred to by Checchi. Further, in Department of Labor Day Care Parents' Association, 54 Comp. Gen. 1035 (1975), 75-1 CPD 353, we held that an evaluation was not improper merely because a member of a technical evaluation panel did not participate in the final evaluation even though he evaluated the initial proposals or because the individual evaluators did not discuss their views of the revised proposals with each other. We pointed out that such was not necessary since

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the manner and extent to which source selection officers will make use of technical evaluation scores and reports is within their "very broad * * * discretion," 54 Comp. Gen. at 1040, so that it could not be readily said that a particular offeror would be prejudiced by the absence of the views of any one evaluator. See also, Grey Advertising, Inc., 55 Comp. Gen. 1111, 1118-22 (1976), 76-1 CPD 325.

B. Adherence to Evaluation Criteria and Negotiation Requirements

The RFP set forth Evaluation Criteria, in relevant part, as follows:

"(a) Staff

Experience of the proposed Project Director and his key assistants in fields of research management and nutrition science.

* * * * *

"(b) Science and Business Management Support and Logistics

Previous management experience in operation of a large research program and previous experience in managing the scientific aspects of large research facilities.

* * * * *

"(c) Understanding of Program and Awareness of Problems Involved

* * * * *

Statement and discussion of anticipated major difficulties and problem areas, together with potential or recommended approaches for their resolution."

Checchi's contention that HEW did not adhere to these criteria in evaluating proposals is based on the stated weaknesses found to exist in Checchi's initial proposal. These weaknesses were identified as follows:

"a. Key staff - lack of experience in management of biomedical research and nutrition as related to disease.

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- "b. Management/logistics - lack of understanding of management in the biomedical research environment and lack of experience in management and operations of a large biomedical research program.
- "c. Understanding of program and potential problems - lacked identified potential problems and alternative solutions."

Checchi contends that the RFP did not specify that a proposer should have previously managed biomedical research or that the staff proposed should have managed biomedical research which related nutrition to disease. In Checchi's view, these criteria are new and more limiting than those in the RFP.

We cannot agree. We have taken the position that major evaluation criteria listed in an RFP need not be broken down to reflect each specific factor actually considered in the detailed evaluation of proposals, so long as there is sufficient correlation between the stated criteria and the factors actually used. See AEL Service Corporation, et al., 53 Comp. Gen. 800 (1974), 74-1 CPD 217; 51 Comp. Gen. 397 (1972); 50 id. 565 (1972). Here we think there is a specific correlation between general scientific experience and biomedical experience in that the former obviously encompasses the latter. See BDM Services Company, B-180245, May 9, 1974, 74-1 CPD 237. Accordingly, we do not find that NCI deviated from the established evaluation criteria.

In connection with the evaluation, Checchi also alleges that the evaluation panel improperly used Enviro Control's proposal as the basis or standard for judging all other proposals, and questions why NCI did not identify any deficiencies or weaknesses in the initial Enviro Control proposal when it provided that firm an opportunity to submit a revised proposal.

The record shows that certain evaluators, when passing upon the revised proposals submitted, did make general comparisons between the proposal under review and the Enviro Control proposal (e.g., "The contractor has improved * * * however, the proposal is not at the same level as Enviro Control"; "Enviro Control * * * still far better"). However, this does not mean that the evaluation standards were predicated on the Enviro Control proposal. From our review, it appears that all proposals were measured against the RFP evaluation criteria and that, when measured against those criteria, the Enviro Control proposal was regarded as significantly superior to the competing proposals.

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With regard to NCI's failure to inform Enviro Control of specific weaknesses in its proposal, it is reported that it was not felt necessary to point out deficiencies to Enviro Control in light of that firm's high technical score and the feeling that the deficiencies noted by individual evaluators were not critical to program success. This position, however, is inconsistent with the purpose and basic principles of competitive negotiated procurement. One of the advantages of negotiation over formal advertising is that the Government may seek to reduce or eliminate undesirable aspects of proposals and negotiate for those which are regarded as more advantageous to the Government. Here, although the Enviro Control proposal was acceptable to NCI, it also contained some deficiencies which NCI did nothing to try to have corrected or improved, even though other offerors in the competitive range were informed of deficiencies in their proposals. Obviously, had one or more of the other offerors been able to significantly improve their proposals to the point where Enviro Control's initial proposal would not have been regarded as more advantageous to the Government than another competitor's revised proposal, the absence of an opportunity for Enviro Control to respond to specific weaknesses in its proposal could have prejudiced its competitive position.

Checchi also asserts that it was prejudiced by NCI's failure to advise it of a perceived significant deficiency in its proposal with regard to a proposed advisory panel. A number of the technical evaluators expressed concern that this panel might duplicate and perhaps even conflict with the DNCP Advisory Committee, an internal NCI organ. Checchi challenges both the legitimacy of the evaluators' concern and NCI's failure to include any mention of that concern when it advised Checchi of the weaknesses in its proposal.

It is not the function of this Office to evaluate proposals or to substitute our judgment for that of qualified agency officials. Applied Systems Corporation, B-181696, October 8, 1974, 74-2 CPD 195. Rather, our review is limited to the question of whether proposals have been evaluated in good faith and in accordance with the evaluation criteria and applicable regulations. Joanell Laboratories, Incorporated, B-187547, January 25, 1977, 77-1 CPD 51; METIS Corporation, 54 Comp. Gen. 612, 615 (1975), 75-1 CPD 44. Here, the record shows that the evaluators had serious doubts about the utility and appropriateness of Checchi's proposed advisory panel. Although Checchi disputes the evaluators' judgment, that alone does not establish the invalidity of the evaluators' concerns, Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87, which has not otherwise been shown to be arbitrary or improper. Therefore, we will not further consider this issue.

We agree with Checchi, however, that the listing of weaknesses and deficiencies in its initial proposal should have included mention of the proposed panel. We have held that negotiations must be meaningful and that in many instances meaningful discussions must include pointing out to offerors the areas in which their proposals have been judged deficient. 47 Comp. Gen. 338 (1951); 51 Comp. Gen. 431 (1972); 52 Comp. Gen. 468 (1973). NCI suggests that this test was essentially met because the concern over the proposed panel fell within the general area of "lack of understanding" which was pointed out to Checchi as an area of weakness and because Checchi should have been aware of the evaluators' concern from the questions asked at its oral presentation. HEW, however, acknowledges that Checchi should have been specifically informed that its proposed advisory panel was considered to be a weakness, but states that "the absence of the Advisory Panel, or difference in its use as proposed, would not of itself have improved Checchi's proposal to the level where it would have transcended the merits of the successful offeror's proposal."

We find that HEW's view of the situation is correct. In general, once discussions are opened with an offeror, the agency is required to point out all deficiencies in that offeror's proposal and not merely selected ones. Teledyne Inet, B-180252, May 22, 1974, 74-1 CPD 279. Although we have often stated that the extent and content of written and oral discussions is a matter of procuring agency judgment and that in the exercise of that judgment an agency may properly decide, in appropriate circumstances (such as where the possibility of technical trans- fusion or leveling exists), not to specifically point out certain proposal deficiencies, see Sperry Rand Corporation (Univac Division), et al., 54 Comp. Gen. 408 (1974), 74-2 CPD 276; Dynalectron Corporation, et al., 54 Comp. Gen. 532 (1975), 75-1 CPD 17, the record does not indicate the existence of such circumstances in this case. Furthermore, while requests for clarification or amplification or other statements made during oral discussions may be sufficient to alert an offeror to an area of weaknesses in its proposal, see Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404; 53 Comp. Gen. 382 (1973), here the record suggests that as a result of discussions the protester was led to believe that the concern with the proposed panel had been cleared up rather than that the panel was a weakness requiring proposal revision.

We do not find, however, that these deficiencies in the procurement process warrant our disturbing the award. It is clear that Enviro Control was not prejudiced by HEW's failure to identify any weaknesses in its proposal. We also think it is reasonably clear, in view of both the overall technical evaluation of competing proposals and the cost differences among those proposals, that Checchi would not have been selected for award even if the evaluators' concern with respect to the advisory panel had been clearly communicated to Checchi.

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In this connection, we note HEW's finding "that the absence of the Advisory Panel, or difference in its use as proposed, would not have of itself improved Checchi's proposal to the level where it would have transcended the merits of the successful offeror's proposal." We further note that Enviro Control proposed costs of \$340,543 while Checchi proposed costs of \$464,893, and that a substantial cost differential would remain even after deducting from Checchi's proposed costs the costs associated with the proposed panel. Thus, we cannot conclude that Checchi was materially prejudiced by the inadequate negotiations conducted in this case.

Finally, Checchi complains that its proposal and the Enviro Control proposal were treated differently in that the evaluators did not recognize deficiencies in the latter proposal, particularly with respect to scientific input and a detailed work plan, even though Checchi was penalized for the same deficiencies. In this connection, Checchi points to provisions of the Enviro Control proposal as indicating Enviro Control's intention to furnish substantive scientific input and to the absence of any work plan from that firm's proposal.

From our review of the record, it appears that the evaluators were concerned with unwarranted offers of scientific input relating to the formulation of program strategies, overall policy and direction. It further appears that this was not what Enviro Control proposed to do. Section III. 2a of that firm's proposal stated:

"The groundwork and general structure of the overall program will be established by the Director with the guidance of the Advisory Committee; ECI does not expect to be deeply involved here, but there will be ad hoc tasks for ECI such as seeking and compiling consultant opinions on a specific project and providing an independent summary and evaluation of literature reviews on nutrition and cancer."

We think this suggests that Enviro Control understood its role as subordinate and supportive to the Director and Advisory Committee of DNCP. The provisions which Checchi cites as examples of Enviro Control's proposing substantial scientific input appear to be more in the nature of provisions for scientific input to a program, the design and structure of which would already be conceived by the Director and Advisory Panel of DNCP, rather than input regarding how the program should be structured.

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With regard to the work plan, Checchi points out that the evaluators found fault with its work plan, but that Enviro Control did not offer a work plan at all. The RFP, however, did not require the submission of a work plan. It only recommended that a listing of chronological milestones be provided. The weight to be accorded the absence of a milestone chart was a matter for the judgment of the evaluators. We find no basis for disagreeing with the evaluators' judgment regarding the acceptability of the Enviro Control proposal notwithstanding the absence of a milestone chart from the proposal.

The protest is denied.

Acting

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Comptroller General
of the United States