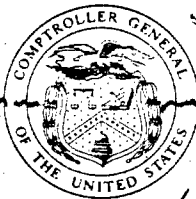


DECISION



13846 PL-77  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

*[Protest Alleging Improper Evaluation of Proposal]*

FILE: B-196243

DATE: May 28, 1980

MATTER OF: John Snow Public Health  
Group, Inc. 4713

DIGEST:

Where record does not justify contracting officer's finding that competing proposals are essentially equal, award to offeror on basis of lower estimated cost is improper departure from stated solicitation evaluation factors which place emphasis on technical merit.

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AGC00566  
John Snow Public Health Group, Inc. (JSI), protests the award of a cost-plus-fixed-fee, requirements type contract for consultant technical assistance, to Analysis Management and Planning, Inc. (AMPI), under request for proposals (RFP) No. HSA240-BCHS-164(9), issued by the Health Services Administration (HSA), Department of Health, Education and Welfare, now the Department of Health and Human Services (HHS). JSI contends that HSA improperly based the award upon the lowest estimated cost rather than the evaluation criteria in the RFP, and, alternately, that it neglected to perform the requisite cost analysis to determine whether the offerors' respective cost estimates were realistic.

The RFP sought proposals for technical assistance to be rendered during fiscal year 1980 to HEW Regions I and II regional staffs and Bureau of Community Health Services (BCHS) supported health care projects. Technical proposals were to comport with the requirements specified in the Technical Proposal Instructions, and were to be evaluated in accordance with certain evaluation criteria which were as follows:

"The technical proposals shall be evaluated in accordance with the following factors listed in their relative order of importance:

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1. Personnel and Experience 60
2. Problem and Approach 30
3. Facilities 10

"No factors other than those listed above will be used in the evaluation of the offeror's technical proposal.

"Award will be made to the offeror submitting the proposal determined to be most advantageous to the Government. Cost will be considered secondary to technical merit in the award selection process." (Emphasis added.)

Two proposals -- from AMPI and JSI, the incumbent-- were received by the August 10, 1979 opening date and were forwarded for initial evaluation to the technical evaluation panel. The proposals were scored by the panel as follows:

	TECHNICAL SCORE (Scale of 100)	PROPOSED COST
JSI	91	\$359,066
AMPI	71	376,379

It is reported that, although JSI received the higher aggregate technical score (as well as the higher average score in each of the three evaluation categories) and submitted the lowest price, AMPI's proposal was deemed technically acceptable and within the competitive range. Telephone conversations were held with both offerors on September 20, 1979, for the purpose of discussing technical deficiencies noted in the original technical evaluations, and best and final offers were then submitted on September 25, as follows:

AMPI	\$328,274
JSI	346,771

These modified proposals were reviewed by the evaluation panel and on September 28 the Chairman, citing six significant elements of the JSI proposal, recommended that award be made to JSI on the basis of technical superiority.

Later on September 28, the contracting officer met with members of the evaluation panel, including the Chairman, to determine the margin of JSI's remaining superiority and was informed that, had the modified proposals been scored, JSI's rating would have increased to 96 or 97 and AMPI's to 85 or 86. On the basis of this information as well as her own examination of the proposals, the contracting officer determined that AMPI's proposal was as technically acceptable as JSI's. In the contracting officer's opinion, the remaining deficiencies in AMPI's proposal would likely be true of any non-incumbent contractor without recent experience in Regions I and II while much of JSI's superiority was attributable to factors not required by the RFP. Since the contracting officer deemed the proposals to be essentially equivalent on technical merit, she concluded that award to AMPI at an \$18,000 lower estimated cost would be in the best interests of the Government. The contract was awarded to AMPI on September 28.

JSI asserts initially that since its proposal was clearly technically superior to AMPI's, as reflected in the point scores assigned the two proposals by the evaluation panel, award to AMPI was necessarily based on lower cost. Award on this basis, it argues, was improper because the RFP emphasized technical considerations in the evaluation while assigning only "secondary" importance to price. In support of its contention, JSI also cites Federal Procurement Regulations (FPR) § 1-3.805-2(n), which states that estimated costs should not be the controlling factor in cost-plus-fixed-fee contract awards since such estimates may not be indicative of actual final costs.

We have stated in a number of decisions that "once offerors are informed of the criteria against which

their proposals are to be evaluated, it is incumbent upon the procuring agency to adhere to those criteria or inform all offerors of changes made in the evaluation scheme." Telecommunications Management Corporation, 57 Comp. Gen. 251 (1978), 78-1 CPD 80; Genasys Corporation, 56 Comp. Gen. 835, 838 (1977), 77-2 CPD 60. Under this standard, it would be improper to induce an offer representing the highest quality and then reject it in favor of a materially inferior offer on the basis of price. Signatron, Inc., 54 Comp. Gen. 530 (1974), 74-2 CPD 386. This is not to say, however, that cost may never be considered under these circumstances. Indeed, even where it has been designated as a relatively unimportant evaluation factor, cost may become the determinative factor if source selection officials find that no proposal is clearly superior based upon other more significant criteria. Bunker Ramo Corporation, 56 Comp. Gen. 712 (1977), 77-1 CPD 427.

We note at this juncture that it is neither our function nor our practice to conduct a de novo review of technical proposals and make an independent determination of their relative merit. This is the function of the procuring agency. We will question a contracting official's conclusions regarding the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. E-Systems, Inc., B-191346, March 20, 1979, 79-1 CPD 192.

The HSA contracting officer's conclusion that the JSI and AMPI proposals were technically equal was based upon her observation that JSI's point score superiority was attributable to AMPI's lack of recent experience in Regions I and II, and to the inclusion in JSI's proposal of factors, such as current library and computer resources, which enhanced JSI's rating, but were not "required" by the RFP.

We do not believe the contracting officer's conclusions were reasonable in this respect. For example, while the RFP does not require the maintenance of a current library or the use of computer resources for this

project, neither did it require the use of any other specific facilities, resources or subcontractors to perform the required tasks. In this regard, JSI proposed the use of a Puerto Rico based subcontractor to provide on-site technical assistance and training for the tasks which were to be performed in Puerto Rico and the Virgin Islands. That firm's experience in the health care field in a Spanish speaking "culturally acceptable" environment was recognized as an asset by the technical evaluators, but was discounted by the contracting officer for the most part because of the proposed cost (\$12,500).

The technical evaluators also found portions of the AMPI technical proposal to be "unacceptable." For example, it was the technical evaluators' opinion that AMPI did not satisfactorily clarify its understanding of the "problems" in Puerto Rico, or that firm's understanding of the "programmatic" issues of Region I. Moreover, other areas of the AMPI proposal were judged only "marginally acceptable" by the review panel. On the other hand, no reservations were expressed regarding the JSI technical proposal after the receipt of best and final offers.

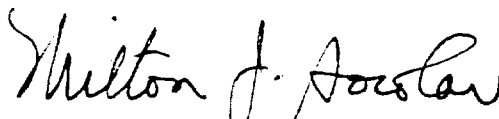
We believe that implicit in the language of the RFP that "cost will be considered secondary to technical merit," is an invitation to offerors to propose the use of methods, facilities, and resources which they believe will best accomplish the desired result, not necessarily at the lowest cost, but at a cost to the Government which is fair and reasonable. We also believe that the contracting officer recognized the technical merit of JSI's proposal by her conclusion that:

"The JSI and AMPI cost proposals are quite similar in their composition and given the fact that both are experienced in delivering like technical assistance efforts, it can be concluded that both cost proposals are reasonable, realistic and probable. However, it can also be concluded \* \* \* that AMPI offers the Chevrolet model required by the RFP, while JSI offers the more expensive Cadillac version." (Emphasis added.)

There is, therefore, no suggestion that the 5.6 percent higher JSI cost proposal was unreasonably high for that which was offered, nor in our view, does the record support a finding that the competing proposals were essentially equal. Thus, there appears to have been an improper departure from the stated evaluation factors, since ultimately technical merit and cost were given equivalent consideration in the evaluation. In our opinion, the contracting officer improperly awarded this contract to the lowest priced offeror, since notwithstanding her statement that the two proposals were "essentially equal," the record does not support her conclusion. Charter Medical Services, Inc., B-188372, September 22, 1977, 77-2 CPD 214. In view of the foregoing, we do not believe it is necessary to consider the protester's alternative basis for protest, i.e., that the contracting officer neglected to perform a cost analysis on the AMPI cost proposal. Nonetheless we point out that there is evidence on the record to show that a limited cost analysis was performed.

JSI has recognized that it may not be practical to provide any meaningful relief in this case because of the extent of the contract performance. See Cohu, Inc., 57 Comp. Gen. 759 (1978), 78-2 CPD 175. Here, about two-thirds of the term of the contract has been completed, and we therefore do not believe it would be in the best interest of the Government to disturb the present award. Nonetheless, we are bringing the matter to the attention of the Secretary of Health and Human Services.

The protest is sustained.



For the Comptroller General  
of the United States