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Mr. Japiste

**DECISION**



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

FILE: B-198889

DATE: May 6, 1981

MATTER OF: Systems Group Associates, Inc.

DIGEST:

1. In negotiated procurement to develop and implement hospital collection unit, contracting agency could modify requirements during discussions provided offerors were given opportunity to amend their proposals.
2. Unless specifically precluded by agency, offerors are free to revise any aspect of their proposals in best and final offers. Protester was not prevented from amending technical proposal by agency's formal request for best and final "cost offer" which for first time sought alternate pricing and which therefore could not reasonably be viewed as precluding necessary changes to technical proposal.

Systems Group Associates, Inc. (SGA) [protests the procedures followed by the District of Columbia General Hospital (DCGH) in awarding a contract under request for proposals] (RFP) DCGH JB/80024 [for services related to the collection of delinquent patient accounts.] SGA also seeks proposal preparation costs.

The protest and the request for the costs of preparing a proposal are denied.

The RFP provided for award of a contract to establish and operate a collection system to recover past due accounts for the hospital. Work was to be done in three phases. During the first phase, the contractor would review DCGH operating practices bearing upon collecting delinquent accounts. The second phase required the contractor to establish and staff a collection unit using contractor-owned facilities, including computer facilities able to use hospital-furnished computer data. The collection unit would locate, file and pursue overdue accounts, settle disputes and refer accounts which could not be collected or settled to the District

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of Columbia Corporation Counsel. Finally, during phase three the contractor would transfer its operations to the hospital, which would assume responsibility for operating the collection unit. Once responsibility was transferred, the contractor would monitor operations for one year.

SGA advances three basic complaints:

1. [SGA contends that it should have been furnished an agenda or other information in order to adequately prepare itself for oral discussions. Also, SGA suggests that the discussions should not have been limited to one meeting] and that follow-up presentations should have been permitted to allow SGA to expand orally on the points raised at the meeting which was held.
2. [SGA maintains that during discussions DCGH improperly altered the basis on which proposals were to be evaluated by changing the weights given employee training and an offeror's past experience with collection systems from the weights specified in the solicitation issued.]
3. [SGA contends that DCGH improperly altered the RFP's statement of the agency's requirements during the procurement process] and, specifically, should not have (a) deleted anticipated Medicaid and Medicare payments collections amounting to \$7,000,000, or (b) substantially increased its estimate of uninsured so-called "self-pay delinquent accounts."

In response, [DCGH insists that it acted properly in conducting discussions, says it furnished an agenda at the time it met with SGA, and argues that while during discussions it may have emphasized certain of the evaluation criteria that would be used in making award, it did not alter the criteria or their relative weights.] DCGH recognizes that [its assessment of its needs changed during the procurement, but argues that it properly advised offerors of those changes and allowed offerors to submit best and final offers to reflect them.]

{ There is no merit to SGA's first argument that it should have been afforded advance knowledge of the subjects to be considered during discussions and that follow-up meetings should have been held. The Government is not required to furnish offerors with an agenda prior to holding discussions. }  
{ While an agency is required to bring proposal deficiencies to an offeror's attention to permit their correction, the procedure employed is largely a matter of discretion which this Office will not question absent clear evidence of abuse. } See Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458 at p. 36.

Regarding SGA's two other complaints, SGA evidently believes that DCGH should not have been permitted to alter its evaluation criteria (if in fact they were altered) or to modify its requirements during the procurement. However, { changes ordinarily are permitted during the course of a negotiated procurement, as long as offerors are given the chance to respond to them. } Alton Iron Works, Inc., B-179212, May 6, 1974, 74-1 CPD 121.

DCGH's solicitation indicated that award would be based on offerors' potential abilities to remit the most net dollars to the hospital, and set out estimates of the number and value of delinquent Medicare, Medicaid and "self-pay" accounts. The RFP also stated the method by which the agency intended to evaluate offerors' technical approaches. The record indicates that DCGH's concerns and changes during negotiations in these respects were covered in the discussions with SGA and, as further discussed below, were treated in part in DCGH's call for best and final offers. Thus, it does not appear that SGA was misled regarding DCGH's changed needs and evaluation intentions. Also, { as long as SGA was allowed to amend its proposal to reflect any changes which were made after initial proposals were received, SGA was not prejudiced by the changes. } See United States District Court for the District of Columbia, 58 Comp. Gen. 451, 470 (1979), 79-1 CPD 301.

However, { SGA says it was not afforded a fair opportunity to make changes in its technical proposal to reflect what it learned during discussions regarding DCGH's requirements and the evaluation procedure. } SGA says it was told during its meeting with DCGH that it should orally expand its technical proposal at that time, since it would not be given an opportunity to change it later. According to SGA, this was confirmed

by DCGH's subsequent written call for a best and final "cost offer," which SGA points out referred only to cost and did not indicate that SGA could make changes to its technical proposal. In this respect, DCGH's letter requesting best and final offers indicated that it confirmed an earlier conversation of the same date and stated in material part that:

"[SGA] is now being given the opportunity to submit a 'Best and Final' cost offer, which should reflect new quotations differentiating between contingency percentage to be charged for collection of only self-pay accounts and the collection contingency fee for perfecting Medicare and Medicaid billings in addition to the self-pay [accounts] \* \* \*."

In response to SGA's allegations, hospital personnel insist that SGA was never told during discussions that it would not be permitted to amend its technical proposal. DCGH has submitted a transcript of the discussions with SGA to show that SGA was not misled in that regard. DCGH also says that it telephoned all of the offerors to advise them of the request for best and final offers, and at that time told each that it was free to amend its technical as well as its cost proposal.

[We have held that absent express contrary instructions offerors should know that changes to their technical proposals are permitted in best and final offers.] American Nucleonics Corporation, B-193546, March 22, 1979, 79-1 CPD 197. Thus, in the cited case, where a protester assumed that the contracting officer's failure to raise technical issues during discussions meant it could not alter its technical proposal, we agreed with the Air Force that the protester:

"should have known that technical changes could have been proposed in its best and final offer. That is a basic tenet of negotiated procurements and the Air Force's request for best and final offers did not state or indicate that proposed technical changes could not be submitted."

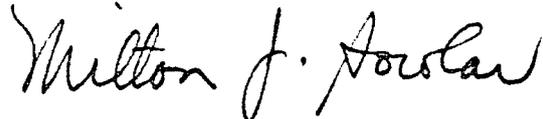
SGA correctly points out that the DCGH transcript of the discussions, which the agency asserts shows that it did not limit the nature of any changes that SGA would be permitted to make in its proposal, is unclear in a number of

respects, appears incomplete and does not follow the agenda which DCGH established at the outset of the meeting. Nonetheless, it at least shows that technical matters were discussed, including performance with and without Medicare and Medicaid collections.

Moreover, while DCGH's letter requesting a best and final "cost offer" might have been worded with more craftsmanship, as we read it, the hospital simply sought to emphasize that offerors should propose two prices -- one which included Medicare and Medicaid collections and one which did not. Since the letter calls for alternate pricing on bases not initially described in the RFP -- with and without Medicare and Medicaid collections -- offerors should have known that changes to their technical proposal would be necessary and were permitted.

As indicated above, an offeror is free to revise its best and final offer in any respect unless specifically precluded from doing so by the contracting agency. In light of the record on this protest, [we cannot conclude that SGA was expressly advised that it could not revise the technical aspects of its proposal in its best and final offer. The protest is denied.]

[Since the protest is denied, SGA's claim for proposal preparation costs is also denied.] See Mark A. Carroll & Son, Inc., B-198295, August 13, 1980, 80-2 CPD 114.



Acting Comptroller General  
of the United States