

DECISION

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

file

FILE: B-210227

DATE: May 23, 1982

MATTER OF: Blue Cross-Blue Shield of Tennessee

DIGEST:

1. Protest after award that price rather than technical factors should have been basis for award is untimely, since request for proposals states that technical content of proposals is significantly more important than price.
2. Protest that agency improperly awarded points for features exceeding minimum requirements is without merit where technical factors are important part of competition and higher technical evaluation score accorded awardee's data processing system and beneficiary/provider relations program reflects nothing more than agency's reasonable assessment that awardee's system offered superior ability to meet requirements in request for proposals. Offerors are or should be on notice that qualitative distinctions will be made when technical factors are part of competition.
3. In camera review of source-selection documents shows evaluation was fair and reasonable and consistent with evaluation criteria in solicitation.
4. Protest against propriety of agency's cost evaluation is denied where, because of protester's low technical score, protester would not have been selected for award in any case.
5. No basis exists to preclude contract award merely because low offer may be below cost.
6. Protest against technical evaluation of protester's proposal is untimely where protester does not challenge technical evaluation of proposal in initial protest and does not do

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so until more than 10 days after being advised of technical deficiencies at debriefing or subsequent meeting.

Blue Cross-Blue Shield of Tennessee (Tennessee) protests the award of a contract to Blue Shield of California (California) by the Office of Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) under request for proposal (RFP) No. MDA906-82-R-0007.

The contract consolidates from three contractors to one fiscal intermediary services (claims processing services) in the southeastern region of the United States consisting of Alabama, Florida, Georgia, Mississippi, Tennessee and the Commonwealth of Puerto Rico. CHAMPUS awarded to California, because California's proposal, although higher priced, was considered the best technical proposal.

The Tennessee basis of protest is that CHAMPUS improperly accepted California's higher priced proposal instead of Tennessee's lowest priced proposal which was technically acceptable. Tennessee further alleges that the awardee was awarded points, and CHAMPUS is paying a higher price, for system enhancements which have speculative value. Tennessee asserts its past, current and future performance has, is and will continue to be superior to that of California. Tennessee also protests CHAMPUS's failure to consider under Tennessee's cost proposal a member hospital discount allegedly available to Tennessee of \$500,000 a year (\$1.5 million for 3 years). Tennessee also argues that California has offered a below-cost price and that California cannot deliver the services at the price offered.

We find Tennessee's allegations to be either without merit or untimely.

Initially, Tennessee's allegation after award that the evaluation process should have emphasized price, not technical, and that award should have been on the basis of price is an untimely challenge to the RFP's award criteria. See Information Network Systems, B-208009, March 17, 1983, 83-1 CPD 272. The RFP award criteria provided that "The degree of importance placed on technical content is significantly greater than that placed on price." Our Bid Protest Procedures require that protests of alleged improprieties in

an RFP which are apparent prior to the closing date for submission of initial proposals be filed prior to that date. 4 C.F.R. § 21.2(b)(1) (1983).

Regarding Tennessee's allegation that CHAMPUS awarded to the most elaborate proposal regardless of cost and that Tennessee would have performed the work at a lower cost, we considered a similar contention in Mutual of Omaha Insurance Company, B-203338.2, September 24, 1982, 82-2 CPD 268. In that decision, we rejected the contention of a lower ranked technical offeror that CHAMPUS had improperly awarded points for features exceeding minimum requirements. We determined that, where technical factors are an important part of the competition and the higher technical evaluation score accorded the awardee's system reflects nothing more than the agency's reasonable assessment that the awardee's offered system best met the RFP requirements, the award of more points to the awardee is proper. We stated that offerors are or should be on notice that qualitative distinctions will be made when technical factors are part of the competition. Tennessee's position that CHAMPUS should not be permitted to make qualitative distinctions would deny the means to differentiate among proposals on the basis of technical merit.

As in Mutual of Omaha Insurance Company, *supra*, the record indicates that the higher technical rating which CHAMPUS accorded California's proposed ADP system and beneficiary/provider relations program reflected nothing more than CHAMPUS's reasonable assessment that California's system offered a superior capacity to satisfy CHAMPUS's requirements.

Here, in camera review of the scoresheets and source-selection documents shows that the technical evaluation was fair and reasonable and in accord with criteria listed in the RFP. In this regard, the record supports CHAMPUS's assertion that, contrary to Tennessee's specific allegation, Tennessee received more points than California under the experience performance factor, although this did not offset other evaluated areas in which California scored higher.

Tennessee alleges that CHAMPUS failed to properly evaluate a discount of approximately \$500,000 a year which Tennessee obtains from hospitals with which it has contracts

and which would be passed on to the Government as cost savings. Tennessee contends that this savings should have been used to lower Tennessee's overall evaluated price. CHAMPUS asserts it assigned the discount some points under technical, but considered the estimated savings were not substantiated, and did not consider the discount under price. The issue of the evaluation of a hospital discount was raised in a prior protest of the award of a CHAMPUS fiscal intermediary services contract, Pennsylvania Blue Shield, B-203338, March 23, 1982, 82-1 CPD 272. As in that case, here, we need not resolve the issue of whether the discount should have been applied to price.

Where, as here, an RFP provides that technical factors are of paramount importance in the selection decision, an agency has broad discretion to select the best technical proposal over a lower ranked but lower cost one. See, e.g., Alan-Craig, Inc., B-202432, September 29, 1981, 81-2 CPD 263, at p. 8; General Exhibits Inc., 56 Comp. Gen. 882, 887 (1977), 77-2 CPD 101. As noted above, California's proposal was properly determined the best technical proposal and, although it was higher priced than Tennessee's, CHAMPUS awarded to California. CHAMPUS has rescored the Tennessee and California offers as if the discount in issue were considered. Because of California's technical superiority, that firm still receives a higher overall score than Tennessee. CHAMPUS reports that, even if the discount were considered in evaluating Tennessee's cost proposal, the agency simply would not have accepted Tennessee's lower scoring technical offer just to save less than 4.6 percent of California's evaluated price over a 3-year period. Consequently, the propriety of CHAMPUS's decision not to consider the discount in the cost evaluation need not be resolved since it did not affect the selection decision. See Pennsylvania Blue Shield, supra.

Tennessee also contends that California's price is below cost and that California cannot perform at its offered price. The contract is a fixed-price contract. CHAMPUS made a detailed price evaluation. CHAMPUS determined that California's price was supportable and found no evidence of a buy-in. However, even if California will have a loss at its offered price, the practice of submitting a below-cost offer is not illegal and the Government cannot withhold an award merely because the low offer is below cost. Sun Temporary Services, B-210577, February 17, 1983, 83-1 CPD 167. Whether the low offeror can perform the contract at the

price offered is a matter of responsibility of the offeror and a determination that an offeror is responsible is a prerequisite to an award. Our Office does not review protests concerning affirmative determinations of responsibility absent a showing that the contracting officer acted fraudulently or in bad faith or that definitive responsibility criteria in the solicitation have not been met. Teamster Local No. 270, B-208634, September 15, 1982, 82-2 CPD 230. Accordingly, we dismiss this aspect of the protest.

Finally, in its January 5, 1983, letter to our Office, Tennessee first alleges that it should have received maximum points for the following categories: beneficiary services, institutional provider rate review, automation of mental illness reviews, additional information requests, "appeal message incomplete," and split jurisdiction claims handling. In its initial protest to our Office, Tennessee did not allege that its technical proposal was improperly evaluated. Rather, Tennessee challenged the evaluation criteria and the failure to award to Tennessee as the low cost offeror, to consider the hospital discount in its price and its superior performance in this type of work. In fact, Tennessee reserved the right to supplement the protest after a debriefing. We do not find the initial protest sufficient to constitute a timely protest against the specific deficiencies in the firm's technical proposal of which Tennessee was advised at the debriefing and another meeting.

Our Bid Protest Procedures require that protests against other than alleged deficiencies that are apparent from the solicitation itself be filed within 10 working days after the basis for protest is known or should have been known. 4 C.F.R. § 21.1(b)(2) (1983). Tennessee was advised of the deficiencies in issue at a November 4, 1982, debriefing or at a meeting on November 23, 1982. Therefore, the firm had 10 working days after learning of the deficiencies to file a protest. Pennsylvania Blue Shield, supra; Lambda Corporation, 54 Comp. Gen. 468 (1974), 74-2 CPD 312. The letter of January 5, 1983, is not a filing within this time limit.

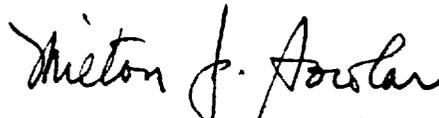
Our Bid Protest Procedures are designed to give protesters and interested parties a fair opportunity to

present their cases with only minimal, if any, disruption to the orderly and expeditious process of Government procurement. See Bird-Johnson Company--Request for Reconsideration, B-199445.3, October 14, 1980, 80-2 CPD 275. They do not contemplate a piecemeal presentation or development of protest issues. See Radix II, Inc., B-186999, February 8, 1977, 77-1 CPD 94. We believe that, where a firm has been debriefed so that it knows of the precise reasons behind the evaluation of its technical proposal, the purpose of our Bid Protest Procedures can be served only if the firm's protest reasonably indicates that it is based on a dispute with the debriefing information.

In Kappa Systems, Inc., 56 Comp. Gen. 675 (1977), 77-1 CPD 412, we stated that we generally will consider later-filed materials and/or arguments which merely provide further support for an already timely protest. See also Memorex Corporation, 61 Comp. Gen. 42 (1981), 81-2 CPD 334. However, we think Tennessee's protest against the technical evaluation of its proposal raises an entirely new issue. The Kappa Systems rule is intended to avoid a situation in which a firm otherwise would delay filing a protest until it was certain that it was in a position to detail all of the possible separate grounds of its protest. That situation would be detrimental to the basic underlying objective of our Bid Protest Procedures: to assure that protests against the award or proposed award of contracts are made promptly.

The rule, however, presumes a timely initial protest that merely lacks detail. It is not designed to permit a protester to toll our filing requirements by reserving the right, in effect, to raise new grounds of protest subsequently if the firm is not satisfied with the contracting agency's response to its otherwise timely protest. Pennsylvania Blue Shield, supra.

We dismiss the protest in part and deny it in part.

for 
Comptroller General
of the United States