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DECISION



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

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FILE: B-215613.2

DATE: December 10, 1984

MATTER OF: Prison Health Services, Inc.

DIGEST:

1. Award of a contract for prison medical services to higher cost technically superior proposal is not objectionable where award on that basis is consistent with the RFP's evaluation criteria and the procuring activity reasonably determined that the higher cost was justified by the awardee's comprehensive and innovative prison health services program.
2. Where an offeror's proposed staffing proposal is considered acceptable, the agency was not required to discuss this subject with the offeror during competitive range discussions nor was it required to do so when procuring officials decided that they preferred another offeror's proposal providing for more staff hours for certain health professionals' services.
3. Point scores are only guides for decisionmaking and contracting officer is not bound by them. Contracting officer reasonably relied upon agency's technical experts' reevaluation of two top numerically rated proposals and determination that awardee's higher priced/technically superior proposal best met the agency's needs.
4. A protest based upon alleged improprieties in request for proposals filed after the closing date for receipt of proposals is untimely.

Prison Health Services, Inc. (PHS), protests the award of a contract to Frank E. Basil, Inc. (Basil), under request for proposals (RFP) No. J275-0014, issued by the Federal Bureau of Prisons, Department of Justice (Bureau).

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

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The RFP sought offers for health services for the United States Federal Prison Camp, Duluth, Minnesota. The RFP advised offerors that technical factors (all noncost considerations) would be worth 75 points and price would be worth 25 points. Proposal evaluation resulted in Basil receiving the highest technical score of 73, while PHS's technical score was 65. On an overall basis (technical plus price), Basil and PHS scored 93.8 and 90, respectively. Notwithstanding that PHS's price was over 20 percent lower than Basil's, the technical review panel recommended that award be made to Basil since Basil's technical proposal was deemed superior to PHS.

PHS challenges the technical review panel's determination that Basil's proposal is technically superior to PHS's. In support of this contention, PHS states that it offered to provide a greater number staff hours for certain health professionals than Basil offered. PHS also alleges that during written negotiations, the Bureau improperly failed to point out deficiencies in PHS's staffing proposal which deprived the firm of the opportunity to submit a revised proposal (best and final offer) technically superior to Basil's.

The Bureau responds that it sought a "quality" prison health services program and that its needs were reflected in the RFP award scheme which permitted a maximum of only 25 points out of 100 for price. The Bureau further reports that, due to the price difference in the two proposals, the contracting officer, prior to awarding to Basil, requested that the chairperson of the technical review panel (the Regional Administrator for Medical Services, Bureau of Prisons) review the Basil and PHS proposals. The chairperson, after conferring with the other technical review panel members and the Associate Director for Health Care Services, Bureau of Prisons, responded that, based upon their review of the two competing proposals, Basil's significantly technically superior prison health services approach outweighed the cost difference in the proposals. The contracting officer in agreement with this finding then awarded the contract to Basil.

The evaluation of proposals is the function of the procuring agency, requiring the exercise of informed judgment, and it is not our function nor practice to conduct a de novo review of proposals or to make an independent determination of their relative merits. We will question the procuring agency's evaluation only if the protester

shows the evaluation was clearly unreasonable. The Singer Company, B-211857, B-211857.2, Feb. 13, 1984, 84-1 C.P.D. ¶ 177.

Furthermore, in a negotiated procurement, there is no requirement that award be made on the basis of lowest cost. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. The judgment of the procuring agency concerning the significance of the difference in the technical merit of offers is accorded great weight. Asset Incorporated, B-207045, Feb. 14, 1983, 83-1 C.P.D. ¶ 150. We have consistently upheld awards to offerors with higher technical scores and higher costs so long as the result is consistent with the evaluation criteria and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. Bank Street College of Education, B-213209, June 8, 1984, 84-1 C.P.D. ¶ 607; Tally Educational Services, Inc., B-211936, Feb. 14, 1984, 84-1 C.P.D. ¶ 188; The Singer Company, B-211857, B-211857.2, supra.

Here, the record shows that Basil offered a comprehensive prison medical services program which includes an onsite health care professional staff, specialty outpatient programs for surgery, dermatology, orthopedics, psychiatry and ophthalmology (each specialty program is fully described in the Basil proposal) and an emergency services program. Additionally, to insure that its program objectives are adhered to, the Basil proposal fully describes a comprehensive quality assurance package. In contrast, PHS's proposal essentially restates RFP requirements and lists health care professional staff hours. For instance, while PHS's proposal provided for the services of a pharmacist for 20 hours per week, Basil offered a pharmacy services program which includes the services of a licensed pharmacist and computerized drug profiles for all patients receiving medication. Similarly, while PHS offered to provide a dentist for 20 hours per week, Basil offered a dental services program which places patients in various dental treatment programs as well as a full-time dental hygienist and dentist available on a 24-hour emergency care basis. Based on these and numerous other qualitative differences in the two proposals, we cannot conclude that the award to Basil at the higher cost was unreasonable.

Further, award to a higher cost, higher technically rated offeror was consistent with the evaluated criteria stated in the RFP. Offerors properly were advised that cost was worth only 25 points on a 100-point scale. See The Singer Company, B-211857, B-211857.2, supra.

Next, PHS alleges that, while the Bureau properly advised Basil of staffing deficiencies in its proposal and thus afforded Basil the opportunity to correct those deficiencies, the Bureau improperly failed to point out deficiencies in PHS's staffing proposal. Specifically, PHS alleges that the Bureau failed to point out that it considered the staff hours PHS proposed for a dentist and accredited records technical (ART) "sparse." PHS maintains that had the Bureau properly pointed out to PHS its concerns with PHS's staffing proposal, the firm would have submitted a revised best and final offer.

In general, agencies are required to hold discussions, either oral or written, with all offerors in the competitive range and this mandate can only be satisfied by discussions that are meaningful. Bank Street College of Education, B-213209, supra. Union Carbide Corporation, 55 Comp. Gen. 802 (1976) 76-1 C.P.D. ¶ 134. We have specifically rejected the notion, however, that agencies are obligated to afford offerors all-encompassing negotiations. The content and extent of meaningful discussions in a given case are a matter of judgment primarily for the determination by the agency involved and not subject to question by our Office unless clearly arbitrary or without a reasonable basis. Bank Street College of Education, B-213209, supra; Information Network Systems, B-208009, Mar. 17, 1983, 83-1 C.P.D. ¶ 272. Where a proposal is considered to be acceptable and in the competitive range, the agency is under no obligation to discuss every aspect of the proposal receiving less than a maximum score. Bank Street College of Education, B-213209, supra.

Here, the Bureau sent "letters of negotiation" which listed proposal deficiencies to all offerors in the competitive range. PHS was advised of deficiencies in its proposal concerning the use of prison facilities. PHS was not informed, however, that the Bureau considered PHS's dentist and ART staff hours to be "sparse" simply because at the time the Bureau sent out the "letters of negotiation," it was not concerned about PHS's proposed dentist and ART staff hours.

The record shows that each technical review panel member individually evaluated initial proposals and that the panel members considered PHS's staffing proposal acceptable. However, following the submission of best and final offers, the technical review panel, scoring proposals on a consensus rather than individual basis, determined that it preferred Basil's proposal containing a greater number of staff hours in those areas. Evaluating officials are expected to consider the various aspects of competing proposals when deciding on which proposal to recommend and there is simply no requirement on the part of the agency at that point in time to reopen negotiations to discuss an aspect of the proposal which the officials see as relatively less desirable. Bank Street College of Education, B-213209, supra.

Next, PHS questions the scoring of best and final offers. PHS states that, to its prejudice, Basil's best and final offer received additional technical points even in those areas where Basil did not revise its initial proposal.

We point out that the record indicates that initial proposal scores were computed by a mathematical averaging of the individual scores awarded by the technical review panel members, whereas best and final offer scores assigned were a consensus reached by all the technical review panel members. In this connection, however, we also point out that while numerical scores, when used for proposal evaluation, are useful guides to intelligent decisionmaking, they are not by themselves controlling in determining award. While technical scores, of course, must be considered by selection officials, it is ultimately the source selection official's responsibility to determine what, if any, significance should be attached to the scores tallied by the technical review panel. Global Associates, B-212820, Apr. 9, 1984, 84-1 C.P.D. ¶ 394. Here, as noted above, the contracting officer awarded to Basil only after the agency's technical experts reexamined Basil's and PHS's proposals and determined that Basil's proposal would best meet the agency's needs.

Finally, PHS complains that the Bureau improperly revised certain RFP evaluation criteria by amendment after issuing the RFP. PHS's protest concerning this matter is untimely. Under section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 21.2 (1984), protests based upon alleged improprieties in the RFP, as here, must be protested prior to the closing date for receipt of proposals. Since

PHS did not protest these alleged solicitation improprieties until several months after the closing date for receipt of proposals, its protest is untimely and not for our consideration on the merits. Sperry Flight Systems, B-212229, Jan. 19, 1984, 84-1 C.P.D. ¶ 82.

for *Milton J. Fowler*
Comptroller General
of the United States

Second Staging of Current Documents

Addressee *Prison Health Services, Inc.*
AA 5 00100

Accession No. *0 3 07 56*

Budget Function

Congressional Name

Contact Code *X0 114600*

Congressional Code

Signatory/Witness
Sac. - G. J. [unclear]

Requestor

Organizations Concerned

Descriptive Note

JO B 0000
AA 50069
AA 500190

Index Terms

Contracts and photos
Technical manuals
Contract costs
Proposed contracts
Planners and contracts
evaluation criteria
virtually [unclear]

Law Authority *402*
SS Comp. Can. 402
B- 207045 (1963)
B- 208009 (1963)
B- 211857 (1964)
B- 212820 (1964)
B- 213209 (1964)
B- 21222A (1964)

4 C.F.R. 21.21(b)(1)

Personal Names

Possible Subject Terms

Identifiers