



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Microeconomic Applications, Inc.
File: B-224560
Date: February 9, 1987

DIGEST

1. Allegation that requirement established by agency during discussions was improper because it had no technical justification and was never incorporated by amendment into the solicitation is untimely and therefore will not be considered since it was not raised prior to the next closing date for receipt of proposals.
2. Agency is not bound to explain reasons for adding technical requirement during discussions, and where best and final offer essentially ignores the requirement it is proper for agency to evaluate the offer as technically deficient.
3. General Accounting Office will not appraise the adequacy of the qualifications of an agency's contracting personnel absent showing of possible fraud, conflict of interest or actual bias on their part.

DECISION

Microeconomic Applications, Inc. (Microeconomic), protests the issuance of a delivery order to Expand Associates, Inc., under Department of Health and Human Services (HHS) request for proposals (RFP) No. HRSA86-458(P). The procurement sought proposals to provide consulting services to evaluate the effectiveness of HHS's assistance to historically black colleges in preparing grant applications. Microeconomic challenges the award on several grounds. We dismiss the protest in part and deny it in part.

HHS determined that 5 of the 29 proposals received were in the competitive range for negotiation purposes, with Microeconomic's proposal being the lowest scored of these 5. HHS conducted negotiations with all five offerors concerning the technical and cost aspects of their proposals.

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The RFP specified that nine low-scored historically black colleges disapproved for grants were to be interviewed about the effectiveness of HHS's technical assistance. At least five interviews were to be on-site at the colleges, with the grant managers that had been proposed by the colleges asked for their opinions of the strengths and weaknesses of HHS's technical assistance efforts and their recommendations for improving the assistance.

Prior to negotiations, the exact interview sites had not been determined by HHS. During the discussions, HHS expressly instructed the offerors to prepare their best and final offers (BAFOs) based on two-person interview teams making two airplane trips to two designated cities. HHS had concluded that the minimum of five colleges that had to be visited for on-site interviews could be covered, at a low travel cost, by the two air trips, with accompanying ground transportation.

After evaluating the companies' BAFOs, HHS determined that Microeconomic's proposal no longer had a chance at being selected for award and eliminated it from further consideration. Expand Associates was determined to have the proposal that was most advantageous to the government, and the firm was awarded a contract for the effort.

Microeconomic contends that HHS arbitrarily and unfairly placed constraints on what could be proposed in the BAFOs and misled Microeconomic as to the reasons for the constraints. Microeconomic further contends that HHS manipulated the negotiations as well as the proposal evaluations to favor Expand Associates and that Expand Associates was provided with information not furnished to the other offerors in the competitive range. Finally, Microeconomic complains that the HHS officials responsible for conducting the discussions were not competent to do so.

TIMELINESS

One of Microeconomic's principal arguments is that HHS's requirement for two-person teams had no technical justification and prevented Microeconomic from proposing a technically superior approach to the contract work in its BAFO. Essentially, Microeconomic believed it was preferable from a technical standpoint to have the interviews conducted by only one person since this would permit on-site visits for all nine interviews. Microeconomic also argues that it was improper for HHS to add the two-person interview requirement during negotiations without issuing a written amendment to this effect.

Under our Bid Protest Regulations, alleged solicitation improprieties that do not exist in the initial solicitation, but which later are incorporated therein during discussions, must be protested no later than the next closing date for receipt of proposals, here the closing date for receipt of BAFOs. 4 C.F.R. § 21.2(a)(1) (1986). Although, Microeconomic was made aware of the requirement in issue during discussions, Microeconomic did not challenge the requirement until after the award to Expand Associates, when it filed the instant protest. Therefore, the firm's objections in this respect are untimely and will not be considered.

DISCUSSIONS

Microeconomic contends that the lower technical rating for its BAFO and the resulting elimination from the competitive range were directly attributable to the failure of HHS's negotiators to provide Microeconomic an adequate opportunity to respond to concerns that HHS's technical evaluation team had with the firm's initial proposal. Microeconomic asserts in this regard that it could have written a higher-scored BAFO had it been specifically advised that HHS considered using a single interviewer (and visiting all nine sites) a "technically inferior" approach, compared to the two-person team approach, due to lower interview reliability. Microeconomic claims it was told that the two-person team requirement was added only to make offerors' proposed costs (based on five site visits) comparable for evaluation purposes.

We find nothing unreasonable in the nature or extent of HHS's discussions with Microeconomic. While HHS apparently did not advise Microeconomic that it considered two-person interview teams technically preferable, there was no requirement that it do so. No matter the underlying reason for adding a technical requirement, offerors must either comply with it or successfully challenge it by protest or some other means. Microeconomic did neither here. Although Microeconomic clearly was on notice that HHS wanted proposals based on two-person interview teams, Microeconomic essentially ignored this requirement and, as discussed in the next section, instead continued to insist in its BAFO on the advisability of single-person interviews. It thus was not improper for HHS to downgrade Microeconomic's proposal in this area.

EVALUATION

Microeconomic contends that the technical evaluation was deficient, questioning, for instance, whether the firm was

properly credited for past experience and personnel qualifications.

As the evaluators did not prepare detailed written comments on the proposals, it is not possible to determine the precise impact of specific deficiencies. We nonetheless observe that Microeconomic itself acknowledged in its BAFO that HHS's "concern about [its] experience in evaluation of social programs of this type is understandable," as the project director's prior experience was largely in economics. Although the proposal proceeds to explain why Microeconomic believes this concern is somewhat misplaced, the evaluation record suggests that HHS's concerns were not eliminated. At the same time, the evaluation documents rated as a strength in Expand Associates' proposal its prior experience with at least one very similar project, evidently highlighting Microeconomic's relative deficiency in this area. Such a comparative evaluation is proper in determining whether a proposal has a realistic chance of being selected for award, i.e., whether a proposal should be included or retained in the competitive range. See JDR Systems Corp., B-214639, Sept. 19, 1984, 84-2 C.P.D. ¶ 325.

Moreover, it is fairly clear from the record, and Microeconomic seems well aware, that the principal reason for the downgrading of Microeconomic's proposal was its failure to address in any detail the requirement for a two-person interview approach in its BAFO. Microeconomic's BAFO did not provide a detailed discussion of how the firm would perform two-person interviews or the composition of the team, but included instead an extensive discussion of the merits of Microeconomic's original one-person interview approach. The interview process was the heart of the entire project and, under the RFP's evaluation scheme, the technical approach was the most important criterion, representing 40 percent of the total possible score. We thus do not think it was unreasonable for HHS to determine Microeconomic's revised proposal unacceptable based on the offeror's inadequate treatment of this requirement.

UNEQUAL TREATMENT

Microeconomic alleges that HHS's preference for the two-person interview team requirement may have resulted from improper contacts and discussions with Expand Associates, and that HHS may have provided Expand Associates with substantially more accurate information regarding costs than it gave Microeconomic.

There is no basis in the record for Microeconomic's allegation. We find no evidence, and Microeconomic points

to none, that HHS improperly met with or provided more accurate information to Expand Associates, or that HHS otherwise improperly favored Expand Associates for the award. We therefore dismiss this aspect of the protest as unsubstantiated speculation. Sperry Rand Corp., 56 Comp. Gen. 312, 319 (1977), 77-1 C.P.D. ¶ 77.

Microeconomic raises several additional issues, asserting, for example, that it was denied a fair opportunity to submit a competitive BAFO because the procurement officials who conducted the discussions lacked knowledge and understanding of the technical issues involved in the project. The selection of individuals to serve as proposal evaluators essentially is a matter within the procuring agency's discretion, and we therefore will not appraise the qualifications of such individuals absent a showing of possible fraud, conflict of interest, or actual bias on their part. See Training and Management Resources, Inc., B-220965, Mar. 12, 1986, 86-1 C.P.D. ¶ 244. Microeconomic has made no such showing.

Microeconomic's protest is dismissed in part and denied in part.

for *Harry R. Van Cleave*
Harry R. Van Cleave
General Counsel