



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Commission on Professional and Hospital Activities
File: B-228924
Date: December 29, 1987

DIGEST

1. Where an offeror fails to comply with a solicitation requirement for the submission of detailed information concerning proposed staff, thereby failing to demonstrate the ability to provide the required continuity of services, and its proposal otherwise lacks a reasonable chance for award because of the significant superiority of a competing offeror, the agency does not act unreasonably in eliminating the proposal from the competitive range even though that results in a competitive range of one.
2. A blank offer of compliance or a reference to information held by the offeror but not provided in the proposal is insufficient to comply with a solicitation requirement for the submission of detailed information--names and resumes--concerning proposed staff which an agency deems necessary for evaluation purposes.

DECISION

The Commission on Professional and Hospital Activities (CPHA) protests the exclusion of its proposal from the competitive range under request for proposals No. MDA903-87-R-1000, issued by the Department of the Army for external civilian peer review of military medical care. CPHA alleges that the agency either misread its proposal or excluded it on the basis of informational deficiencies which would have been readily correctable during discussions. We deny the protest.

The solicitation requested proposals for a cost-plus-fixed-fee contract to create and operate a second-generation system of external civilian peer review of the quality of care at military medical treatment facilities (MTFs) in the United States and overseas. Medical care criteria, standards and data sets created under the preceding, first-generation contract were to be furnished to the contractor; first-generation methods and techniques were to be used except to the extent that additional efficiencies and

economies could be introduced. Under the existing system, abstractors extract specified data from the medical records of randomly-selected patients at each MTF and enter the data into microcomputers. For each category of medical occurrence, procedure or diagnosis, computer software processes the encoded data so as to divide the selected cases in that category into those presumed acceptable and those requiring further review; these latter cases are then reviewed by physicians at monthly meetings of a peer review panel. An additional medical advisory panel, composed of representatives of national medical societies, meets twice a year to advise on the development of new criteria and standards; national medical society representatives also participate in the monthly meetings of the peer review panels.

The solicitation required the contractor to use Accredited Record Technicians or Registered Record Administrators to abstract the required data from patient medical records. Peer review panels were to consist of: (1) national medical society representatives; and (2) practicing physicians who are members of the active staff of a hospital accredited by the Joint Commission on Accreditation of Hospitals and who are certified by medical boards in the specialty in which they will be reviewing care. The solicitation required offerors to list "those personnel who will be assigned for direct work on this contract" and to submit resumes "giving the educational background, professional experience and special qualifications of the project director, subcontractors, peer reviewers, review and data staff, consultants, and other personnel directly involved in the contract."

The solicitation provided that in the evaluation of proposals an offeror's proposed cost would be "subordinate to technical considerations." It listed, in descending order of relative importance, the following technical evaluation factors:

- (1) Management Plan and Technical Approach;
- (2) Review Plan;
- (3) Critical Mass-- "The combined resources that the contractor brings to the project work effort must be sufficient to ensure continuity of peer review activity between the 'first generation' and 'second generation' peer review programs, such that routine peer review processes commence effective 1 October 1987";

- (4) Personnel-- "Qualifications of those persons designated to work directly on the project. Subfactors - a. Personnel, b. Subcontractor, c. Consultants";
- (5) (Corporate) Experience;
- (6) (Experience with the) Military Health Care System; and
- (7) Understanding the Scope of Work.

Six proposals were received by the July 15, 1987, closing date; only that submitted by Forensic Medical Advisory Service (FMAS) was found to be in the competitive range. FMAS proposed a cost plus fixed fee totaling \$33,636,267 for the contemplated base year plus 3 option years; its technical proposal received 960 of 1,000 available evaluation points. The next highest-ranked technical proposal was submitted by CPHA, which proposed a cost-plus-fixed-fee of \$29,119,289. CPHA's proposal, however, received only 610 technical evaluation points; it was determined to be technically unacceptable and not susceptible of being made acceptable without a major rewrite.

The Army found that CPHA had failed to demonstrate that it could provide qualified abstractors and physicians for the peer review panels in sufficient numbers and on a timely basis so as to meet the solicitation requirement for continuity of services beginning October 1. Although CPHA was the incumbent, first-generation contractor, the provision of abstractors and peer review physicians was subcontracted to FMAS. While CPHA proposed to provide a pool of not less than 100 peer review physicians through a team agreement--dated July 13, one day prior to the date of CPHA's proposal--with an association representing health plans, it failed to name or provide resumes for any of the physicians. Furthermore, CPHA provided in its proposal the names of and resumes for only 17 of its proposed staff of 47 abstractors; none of the 17 credentialed abstractors had prior experience working as abstractors under the first-generation contract.^{1/} The firm claimed in its proposal that resumes for 20 abstractors were available for inspection at its offices, explaining that a legal dispute with FMAS precluded naming all abstractors "at this time."

^{1/} CPHA also provided resumes for an additional 8 individuals, qualified as credentialed abstractors, which it proposed to employ as regional coordinators (supervisors).

The Army's concerns with regard to CPHA's proposed staff were enhanced by the agency's belief that the proposed new employees would require extensive training before commencement of performance under the new contract on October 1. The agency concluded that CPHA would need to make major revisions to its proposal in order to demonstrate that it could provide critical personnel on a timely basis.

By contrast, the Army determined that FMAS had demonstrated that it could provide sufficient resources to assure continuity of peer review services. As the incumbent subcontractor providing peer review physicians and abstractors, FMAS was found to have proposed the most qualified and experienced staff. FMAS named 64 of 75 peer review physicians which it proposed; it submitted resumes for 42 of the peer review physicians, of whom 35 had been members of first-generation peer review panels, and submitted signed letters of commitment from 17 of the 22 peer review physicians for whom resumes were not provided.^{2/} In addition, FMAS, which proposed to employ 59 abstractors and 8 regional coordinators (supervisors), provided resumes for 62 credentialed abstractors; 41 of the abstractors had worked for FMAS as first-generation abstractors and most of the remainder had worked for FMAS in other capacities (including as regional coordinators).

The Army also found other significant deficiencies in CPHA's proposal. For example, the agency questioned CPHA's proposed approach to meeting the solicitation schedule for modifications to first-generation external peer review computer software. It noted that while CPHA stated in its July 14 proposal that its approach was dependent upon both the award of a contract before the end of July and completion by October 1 under another contract of modifications to the Automated Quality of Care Evaluation Support System (AQCESS), the software which randomly selects cases for review, CPHA also conceded that it was "highly unlikely that this can occur" and instead proposed as an alternate approach delaying the implementation of modifications to the external peer review software. Agency evaluators also questioned CPHA's commitment to finding patient records

^{2/} Although CPHA proposed to employ a pool of at least 100 peer review physicians, at least 25 more than contemplated by FMAS, both offerors proposed a monthly peer review panel of approximately equal size. CPHA's proposal provided for a monthly peer review panel consisting of 15 to 20 peer review physicians and 5 national medical society representatives in any particular month; FMAS proposed a panel consisting of 20 peer review physicians and 5 national medical society representatives.

which were initially identified as missing, concluding that the offeror instead emphasized compensating for the missing records by increasing the number of cases selected for review. Evaluators believed that this would distort the sample of cases because the records initially reported as missing often concerned cases of possibly unacceptable treatment which were in the process of being reviewed by hospital-level quality assurance staff or cases which were unusually complex.

Upon learning of its exclusion from the competitive range, CPHA filed this protest with our Office. Notwithstanding the protest, the Army subsequently made award to FMAS following negotiations with the firm; the agency determined that urgent and compelling circumstances significantly affecting the interests of the United States would not permit waiting for our decision.

CPHA denies that its proposal was seriously deficient so as to require major revisions. It points out that: (1) it proposed to conduct abstractor training in September and to commence abstracting on October 1; and (2) its cost proposal included a commitment by AMCRA to provide by October 1 a pool of not less than 100 qualified and experienced peer review physicians. CPHA contends that it reasonably interpreted the requirement for resumes to extend only to "staff physicians" working on the project and not to members of the peer review panel. It maintains that, in any event, resumes for the peer review physicians "could have been readily provided on request" and that their absence represented no more than an informational deficiency. CPHA considers the other perceived deficiencies in its proposal to be either the result of the agency's misinterpretation of the proposal or merely minor deficiencies which were suitable for correction during discussions.

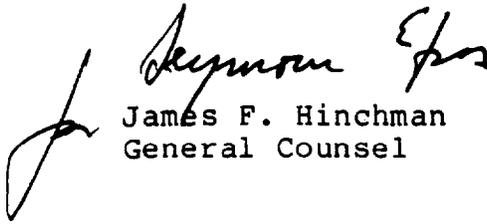
The Competition in Contracting Act of 1984 requires that if an agency conducts discussions, it must do so with all responsible offerors within the competitive range. 10 U.S.C. § 2305(b)(4)(B) (Supp. III 1985). The Federal Acquisition Regulation (FAR) provides that the competitive range must include all proposals that have a "reasonable chance of being selected for award," and that any doubt as to whether a proposal is in the competitive range should be resolved by inclusion. FAR, 48 C.F.R. § 15.609(a) (1986). In view of the importance of achieving full and open competition in government procurement, we closely scrutinize any evaluation that results in a competitive range of one. The Associated Corp., B-225562, Apr. 24, 1987, 87-1 CPD ¶ 436.

Having done so here, we find that the Army had a reasonable basis for considering CPHA's proposed approach to staffing to represent a major deficiency. The solicitation emphasized the importance of demonstrating the ability to provide on a timely basis sufficient qualified staff so as to assure continuity of services beginning October 1; it required offerors to submit detailed information concerning their proposed staffing. The solicitation requirement for listing personnel "who will be assigned for direct work on this contract" and for submission of resumes for "peer reviewers, review and data staff, consultants and other personnel directly involved in the contract" clearly encompassed peer review physicians as well as abstractors, whether provided by a team member other than the one signing the contract or not. CPHA, however, named none of the peer review physicians it proposed to employ and only 17--36 percent--of the abstractors. While CPHA claimed that resumes for 20 abstractors were available for inspection at its offices, proposals must be evaluated on their own merits and evaluators are not required to verify matters which should have been described in the proposal. Advanced ElectroMagnetics Inc., B-208271, Apr. 5, 1983, 83-1 CPD ¶ 360; see Pharmaceutical Sys., Inc., B-221847, May 19, 1986, 86-1 CPD ¶ 569. As for CPHA's expressed commitment to provide the necessary staff, we note that a blanket offer of compliance is insufficient to comply with a solicitation requirement for the submission of detailed information which an agency deems necessary for evaluation purposes. AEG Aktiengesellschaft, 65 Comp. Gen. 419 (1986), 86-1 CPD ¶ 267.

In view of the emphasis which the solicitation placed on proposed staff; the clear solicitation requirement for the submission of detailed information in this regard; the fact that FMAS had provided the peer review physicians and abstractors under the first-generation contract; and the fact that the team agreement with AMCRA was only signed the day before CPHA submitted its proposal, we believe the Army possessed a reasonable basis for concluding that CPHA's failure to name numerous key members of its proposed staff represented more than a mere informational deficiency or unintentional oversight. Moreover, even if CPHA could have submitted additional information concerning its proposed staff and otherwise improved its proposal after discussions so as to render it technically acceptable, it appears that the lower cost proposed by CPHA was insufficient under the stated evaluation criteria to offset the greater experience of FMAS' staff and the overall technical superiority of its proposal. See Forecasting International Ltd., B-220622.3, Apr. 1, 1986, 86-1 CPD ¶ 306. Since CPHA therefore lacked a reasonable chance for award, its proposal was properly excluded from the competitive range.

In view of our conclusion in this regard, we need not discuss the other deficiencies which the Army found in CPHA's proposal.

The protest is denied.



James F. Hinchman
General Counsel