

Westfall



The Comptroller General  
of the United States

Washington, D.C. 20548

**Decision**

Matter of: Fayetteville Group Practice, Inc.

File: B-226422.5

Date: May 16, 1988

**DIGEST**

1. Fact that protester's price was lower than proposed awardee's price is irrelevant where protester's final offer was determined to be technically unacceptable.
2. Protester has not demonstrated that agency's determination that its proposal reflected a lack of understanding of the scope of practice for a primary care clinic was unreasonable where proposal focused on medical services such as emergency care, obstetrics, and psychological services, considered inappropriate by the agency.
3. Protester's objection to the reopening of discussions after receipt of best and final offers is untimely where protest was not filed prior to the closing date for receipt of the additional round of best and final offers.
4. Protester's complaint that the agency failed to notify it of a deadline for extending its offer is dismissed where protester learned of the deadline from another offeror and complied with it.
5. Protester was not prejudiced by agency's failure to notify it of the contract award where the protest is denied on the merits.
6. Protester's complaint concerning the agency's selection of technical evaluators is dismissed where protester makes no showing of possible fraud, conflict of interest or actual bias on the part of the evaluators. General Accounting Office will not conduct an investigation to substantiate the protester's allegations.

**DECISION**

Fayetteville Group Practice, Inc., protests the rejection of its offer under request for proposals (RFP) No. DADA10-87-R-0009, issued by the United States Army Health Services

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Command, Fort Sam Houston, Texas, for the operation of a Primary Care for the Uniformed Services (PRIMUS) clinic in the Fort Bragg, North Carolina, area. Fayetteville argues that since its offer was highly rated, award to a higher-priced offeror was unwarranted. Fayetteville also objects to the evaluation of its proposal. We deny the protest in part and dismiss it in part.

The RFP sought proposals for the establishment and operation of a free-standing facility providing walk-in family practice medical services--including physician, nursing, laboratory, radiological, and pharmacy services--primarily for dependent families of military personnel and military retirees. The contractor was to furnish the personnel, equipment, and supplies needed to operate the clinic. The RFP contemplated the award of an indefinite-quantity, fixed-price contract (with one line item for pharmaceuticals to be on a cost reimbursable basis) for a base year plus 4 option years.

The solicitation provided that proposals would be evaluated on the basis of the following factors (each of which had several listed subfactors) set forth in descending order of importance:

- |                                      |                   |
|--------------------------------------|-------------------|
| a. Technical                         | Equally Important |
| b. Quality Assurance                 | Equally Important |
| c. Management Approach               | Equally Important |
| d. Cost                              |                   |
| e. Site Selection and Marketing Plan |                   |

Ten offerors submitted proposals in response to the RFP. The Army conducted discussions with all offerors and requested best and final offers. Upon evaluation of the responses, negotiations were reopened and a second round of best and final offers requested. Seven of the 10 offerors responded.

The Technical Evaluation Board rated the second round of best and final offers and determined that of the seven received, three were acceptable and four, including the protester's, were unacceptable. In this regard, Fayetteville received a rating of either "Poor" or "Unacceptable" on every subfactor under the Technical, Quality Assurance and Management Approach factors. This low rating was primarily based on the evaluators' conclusion that Fayetteville's proposal was inappropriately focused on obstetrical and psychological services, which showed that the protester did not understand the proper focus of a PRIMUS clinic. Its overall weighted technical score of 1.1 out of a possible 5 was considered unsatisfactory. The protester's evaluated price was \$13,157,377.

On January 29, 1988, the Source Selection Authority selected for award the proposal of PHP Corporation, which had received the highest technical rating of 3.28 and had an evaluated price of \$13,921,854. A contract was awarded to PHP the same day.

In its initial protest letter, Fayetteville complained that although its technical proposal was "rated high," the contract was awarded to a "higher bidder." In response, the Army points out that the protester's proposal was not "rated high," as alleged, but in fact received an extremely low technical score. It was ranked fifth out of the seven best and final offers received and was determined to be unacceptable and outside the competitive range. The competitive range is comprised of all proposals that have a reasonable chance of being selected for award. Federal Acquisition Regulation (FAR) § 15.609(a). Since, as discussed in detail below, the evaluators determined that Fayetteville's best and final offer was no longer in the competitive range, the fact that the protester's evaluated price was lower than that of the awardee is irrelevant since the protester was ineligible for award. Automated Sciences Group, Inc., B-228913, Dec. 15, 1987, 87-2 CPD § 597.

Moreover, even if Fayetteville's proposal had received an acceptable technical rating, award to a more highly rated, higher-priced competitor would not have been inconsistent with the RFP's evaluation scheme. In a negotiated procurement, the agency is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. Jones & Company, Natural Resource Engineers, B-228971, Dec. 4, 1987, 87-2 CPD ¶ 555. The agency has the discretion to select a more highly rated proposal if, as in this case, it is consistent with the evaluation scheme. Antenna Products Corp., B-228289, Jan. 19, 1988, 88-1 CPD ¶ 43.

Fayetteville further argues that its proposal received an unfairly low rating. The protester contends that the evaluators incorrectly determined that its proposal reflected a lack of understanding of the desired scope of practice of the PRIMUS clinic.

In reviewing a protest of an allegedly improper evaluation, our Office will not conduct a de novo review of a technical proposal or make an independent determination of its acceptability or relative merit. Radiation Systems, Inc., B-222585.7, Feb. 6, 1987, 87-1 CPD ¶ 129. That is the function of the selection official who is to exercise informed judgment and sound discretion. Id. Our review is limited to a determination of whether the evaluation was fair and

reasonable and consistent with the stated evaluation criteria. Antenna Products Corp., B-228289, supra. We will question the contracting officer's determination concerning the technical merit of a proposal only upon a clear showing of unreasonableness or abuse of discretion. Jones & Company, Natural Resource Engineers, B-228971, supra.

It is clear from Fayetteville's submission that it disagrees with the evaluators' conclusions regarding Fayetteville's understanding of the scope of work, but the protester has not demonstrated that the evaluators' judgments were unreasonable. The solicitation defined the desired scope of practice for the PRIMUS clinic as those procedures that are customary in a family practice in an office or clinic setting. We think that the agency reasonably determined that Fayetteville's focus on services such as emergency care, obstetrics and psychological services was inappropriate for a family practice clinic. The protester argues that its emphasis on psychological services resulted from its own demographic research, which revealed an acute need for such services among the user population. The existence of a need for such services does not mean that the Army intended to provide them through its PRIMUS clinics, however. The protester has not convinced us that the evaluators' determination that Fayetteville's proposal focused on inappropriate services and did not reflect an understanding of the RFP's scope of work was unreasonable.

In its comments on the agency report, Fayetteville raises several additional arguments. First, the protester objects to the fact that the agency solicited two rounds of best and final offers. We will not consider this argument because it is untimely. Fayetteville was informed by the agency in a letter dated October 16, 1987, that the agency was requesting a second best and final offer to be submitted by October 30. To be considered timely, any protest of this request was required to be filed with our Office or the agency before the next closing date for receipt of proposals, which was October 30. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988); G.E. Calma Co., B-227974, Aug. 24, 1987, 87-2 CPD ¶ 200.

The protester also complains that the agency failed to notify it of a deadline for extending its offer and of the contract award. The protester states that it learned of the deadline for extending its offer from another firm, however, and was able to comply with it. The protester therefore suffered no prejudice as a result of the agency's alleged failure to notify it.

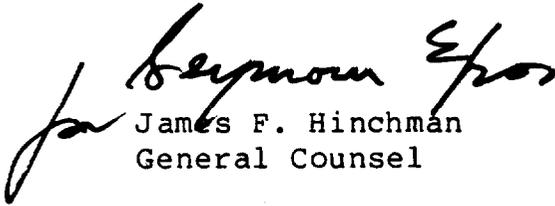
Fayetteville likewise suffered no prejudice as a result of the agency's failure to notify it of the contract award

since its protest has been denied on its merits. Paul G. Koukoulas, et al., B-229650, et al., Mar. 16, 1988, 88-1 CPD ¶ \_\_\_\_\_.

Finally, the protester alleges bad faith on the part of the agency in the selection of the evaluators and asks that we review their qualifications.

The selection of individuals to serve as proposal evaluators is essentially a matter within the discretion of the agency, and we will not appraise the qualifications of such individuals absent a showing of possible fraud, conflict of interest, or actual bias on the part of the evaluators. Paul G. Koukoulas, et al., B-229650 et al., supra. Fayetteville concedes that it has not made such a showing here. To the extent that Fayetteville is asking us to conduct an investigation to substantiate its allegations, the protester has the obligation of presenting its own case. We do not conduct investigations for the purpose of establishing the validity of a protester's argument. Id.

The protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel