Ms. Linder

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fein-Marquart Associates, Inc.

File: B-232412

Date: December 7, 1988

DIGEST

1. Proposal to create a new anti-AIDS drug information system (DIS) by using software enhancements to modify existing anticancer drug DIS and integrate the two systems complies with solicitation which contemplated modifications to existing DIS necessary to accommodate new anti-AIDS drug program.

2. In a small business set-aside procurement, small business contractor who proposes to subcontract less than 50 percent of its personnel costs to another firm complies with the limitation on subcontracting of services for small business concerns.

3. Source selection officials are not bound by the technical evaluators' scores and may reevaluate proposals subject to the test of rationality and consistency with the solicitation's stated evaluation criteria.

4. Protest that agency failed to conduct meaningful discussions with offeror is without merit where agency sent protester detailed questions that informed the protester of the areas of its proposal with which the agency was concerned, and the protester was given an opportunity to revise its proposal in response to these questions.

DECISION

Fein-Marquart Associates, Inc., protests the proposed award of a contract to Capital Technology and Information Systems, Inc., under request for proposals (RFP) No. NCI-CM-87222-72, issued by the National Cancer Institute (NCI) for a computer system to handle data associated with anti-AIDS drug research. In general, the protester alleges that: (1) Capital's proposal did not comply with the solicitation requirements; (2) Capital will not comply with the small business set-aside requirements; (3) Fein's proposal was

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evaluated improperly; and (4) NCI did not conduct meaningful discussions with Fein.

We deny the protest.

NCI has developed an interactive computer system known as the drug information system (DIS) to handle all data associated with its anticancer drug screening program. DIS is an extensive system containing over 20 databases, including separate chemistry and biology files. DIS records all of the daily operations of the drug screening program such as the acquisition, screening, and biological testing of chemicals and is updated daily to include the most current test results. To assist researchers in combating the AIDS epidemic, the agency decided that a DIS-like system should be created with the primary purpose of screening and evaluating chemical agents for their anti-AIDS activity and maintaining the resulting data.

In November 1987, the subject RFP was issued as a total small business set-aside calling for award of a cost-plus-fixed-fee contract to develop and support a version of the DIS for the anti-AIDS program. The RFP stated that proposals would be evaluated based on the demonstrated capabilities of the offerors in relation to the needs of the project as set forth in the RFP. The specific evaluation factors were experience, qualifications and availability of personnel (40 percent); technical approach (30 percent); organizational qualifications and capabilities (20 percent); and facilities and equipment (10 percent).

Fein, the incumbent contractor who had designed the anticancer DIS for NCI, and Capital were the only firms to submit proposals. In January 1988, a technical evaluation group (TEG) performed an initial technical review of the proposals. Fein received a technical score of 878 points and Capital received a technical score of 644 points. Capital's proposed cost was lower than Fein's. In March, the source evaluation group (SEG) reviewed the results of the TEG, concurred that both proposals were technically acceptable and determined that both firms should be included in the competitive range. The SEG also prepared questions advising the offerors of deficiencies in their proposals. In April, NCI sent letters to the two offerors listing the deficiencies in the proposals and requesting the offerors to provide supplemental information in those areas. In June, the SEG received and evaluated the revised proposals. Fein's overall technical score dropped 69 points to 809 points, while Capital's technical score increased 188 points to 832 points. Because Capital's final technical score was higher than Fein's and its evaluated cost was

lower, the SEG recommended that Capital be awarded the contract. In August, Fein was given notice of NCI's proposed award to Capital and then filed its protest with our Office.

Capital's Proposal

The protester argues that Capital proposes to install and maintain a completely new database system, and therefore does not comply with the requirement in the RFP for the contractor to propose a system that uses and supports the existing anticancer DIS. The protester alleges that Capital intends to bypass the anticancer DIS and perform a number of functions outside the DIS, resulting in it being merely a central data repository. Because the anticancer DIS performs many other functions besides accessing data files--maintaining, managing, and searching databases; tracking the acquisition of new substances; and providing data security--Fein asserts that Capital's proposal, in effect, to replace the anticancer DIS with a new anti-AIDS system violates the RFP requirements. In the alternative, the protester alleges that even if Capital proposes to use the anticancer DIS as a database, Capital's proposal does not comply with the solicitation because its proposed enhancements to the DIS are beyond the scope of modifications to the existing system permitted under the RFP. Finally, the protester argues that because the two offerors were interpreting the RFP differently and proposing on two different bases, NCI should have amended the RFP to resolve the apparent ambiguity relating to the permissible degree of modification to the existing anticancer DIS.

NCI asserts that Capital's technical proposal complies with the solicitation requirements. According to NCI, Capital proposed an integrated approach between the anticancer DIS and the new anti-AIDS system by using a relational database package which is separate from, but integrated into, the anticancer DIS. The relational database package will be used to enter, update and query the anti-AIDS screening database; the anticancer DIS will maintain the chemistry, inventory and supplier information relating to the anti-AIDS data.

Although Capital'a proposal has not been released to Fein, we have reviewed the proposal and NCI's evaluation documents in camera, and we agree with NCI that Capital's proposal complies with the requirements of the RFP.

The RFP requires the contractor to develop, operate, and maintain a version of the DIS to manage data derived from the anti-AIDS discovery effort. The RFP recognizes that the

existing anticancer DIS will have to be modified to accommodate the requirements of the new anti-AIDS program. Thus, the RFP calls for the contractor to maintain a version of the DIS, referred to as a "DIS-like shell." Contrary to the protester's assertion, the RFP clearly contemplates enhancements to the existing system. While the RFP requires the anti-AIDS data to reside in the anticancer DIS, the contractor is required to provide software enhancements that will support the anti-AIDS drug program and conform to the anticancer DIS program. In addition, because NCI recognizes there may be differences between the anticancer drug program and the anti-AIDS drug program, the RFP states that the contractor may be required to provide significant software enhancements to the anticancer DIS to reflect such a difference.

Since the solicitation clearly provided for modification to the anticancer DIS as necessary to fulfill the distinct requirements of the anti-AIDS program, we see no basis to conclude, as Fein argues, that the RFP was ambiguous with regard to the permissible technical approach. Rather, the protester and Capital simply proposed two different ways to satisfy the RFP requirements. Further, after review of the entire record, we see no basis to conclude that Capital's proposed approach involves enhancements to the existing DIS beyond the scope contemplated by the RFP. On the contrary, NCI properly found that Capital proposed an integrated approach with changes to the anticancer DIS necessary to accommodate the distinct or additional requirements of the anti-AIDS program.

The protester also asserts that Capital's proposal violates Federal Acquisition Regulation § 52.219-14(a), which requires that at least 50 percent of the contractor's personnel costs be expended for the contractor's employees, because Capital, a small business concern, intends to subcontract more than 50 percent of its personnel costs to another firm. The protester further states that the fully loaded rates for personnel costs for both Capital and its subcontractor should be included when determining the personnel costs. We have reviewed Capital's cost proposal in camera and have determined that less than 50 percent of the personnel costs for both the fully loaded rates and the unburdened rates will be subcontracted. Accordingly, this allegation is without merit.

Fein's Proposal

The protester alleges that the SEG improperly rescored its revised proposal by reducing its technical score by approximately 70 points in the same areas in which its score

already had been reduced by the TEG. Fein further alleges that the SEG improperly failed to increase its score in all areas for which Fein provided satisfactory answers in its revised proposal. We find these arguments to be without merit.

Under the procedures used by NCI here, the initial evaluation was performed by the TEG, an ad hoc group of outside consultants. Their findings then were reviewed by the agency's own SEG. Based on the SEG's recommendations, the contracting officer made the competitive range determination. After discussions, the SEG reviewed the best and final offers (BAFO) and for the first time scored the proposals. The contracting officer then made the award selection based on the SEG's recommendation. We see no basis to object to NCI's evaluation procedures. It is well-settled that a source selection official is not bound by the scoring or recommendations of the technical evaluators. Maschoff, Barr & Associates, B-228490, Jan. 26, 1988, 88-1 CPD ¶ 77. Similarly here, the SEG was not bound by the TEG's point scores, and, as a result, acted properly by scoring the BAFOs based on its own assessment of the technical merits of the proposals.

Further, based on our review of the record, the SEG's evaluation was reasonable. For example, the SEG explains that Fein's point score for the evaluation criterion "personnel" was reduced because the responses by Fein in its revised proposal actually weakened the original proposal. Specifically, the SEG found that Fein failed to respond to NCI's concerns that its principle investigator was not keeping abreast of the state-of-the-art technology, and that Fein's proposed personnel failed to demonstrate the capability to deal adequately with scientific data. Furthermore, we see nothing improper in the fact that the protester's score was not always increased when it submitted a satisfactory answer. In this regard, the record shows that both Fein's and the awardee's scores were increased only when the responses in their revised proposals were determined to substantially improve the proposals.

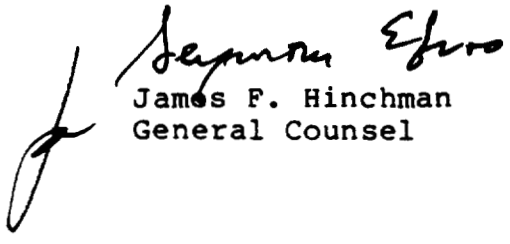
Finally, the protester asserts that NCI failed to conduct meaningful discussions by not advising Fein that its proposal was not considered sufficiently innovative. Fein contends that, in contrast, the questions posed to Capital during discussions encouraged it to pursue a more innovative approach. We find this argument to be without merit.

The actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and our Office will review the agency judgments only to

determine if they are reasonable. Tidewater Health Evaluation Center, Inc., B-223635.3, Nov. 17, 1986, 86-2 CPD ¶ 563. Once having been apprised of problem areas in its proposal, the burden is on the offeror to furnish satisfactory responses after discussions are conducted. Professional Review of Florida, Inc., et al., B-215303.3 et al., Apr. 5, 1985, 85-1 CPD ¶ 394. Moreover, where a proposal is considered to be acceptable and in the competitive range, an agency is not obligated to discuss every aspect of the proposal that receives less than the maximum possible score. Varian Associates, Inc., B-228545, Feb. 16, 1988, 88-1 CPD ¶ 153.

Here, both offerors were treated equally with respect to discussions in that they were both presented a list of written questions outlining the deficiencies in their proposals. Fein's notice contained nine questions relating to perceived deficiencies and Fein, as well as Capital, was afforded the opportunity to revise its proposal. The fact that different types of questions were posed to Fein and Capital is not significant since the questions were tailored to each offeror's proposal; to the extent Capital proposed a more "innovative" approach, NCI's discussion questions logically focused on that aspect of its proposal. In any event, the evaluation documents show that Fein's lack of innovation related only to one aspect of its proposal--the degree to which the proposed system would be "user friendly"--and one of the questions posed to Fein during discussions specifically referred to innovation in this context. Contrary to Fein's contention, there is no evidence that the technical evaluation of Fein's proposal turned on some general determination by NCI that Fein's approach was not sufficiently innovative overall.

The protest is denied.



James F. Hinchman
General Counsel