



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Med-National, Inc.
File: B-232646
Date: January 12, 1989

DIGEST

1. Where the agency's and the protester's versions of the facts conflict concerning when the protester was orally notified that part of its offer was considered unacceptable, the General Accounting Office will resolve doubt over whether the protest was timely filed within 10 days of that notification in the protester's favor.
2. Protester's interpretation of a clause in a solicitation for dental services as allowing substitution of dentists initially proposed by the protester with dentists proposed by other offerors is reasonable where the solicitation does not specifically prohibit such practice.

DECISION

Med-National, Inc., protests a partial rejection of its offer under request for proposals (RFP) No. F41689-88-R-A122, issued by Randolph Air Force Base for general dental services at various locations throughout the United States.

We sustain the protest.

The solicitation sought a contract for 1 to 3 full-time equivalent (FTE) dentists at 69 Air Force bases, for a total of 98 FTEs. Separate contracts were to be awarded for each location for a basic period of 1 year with options for 4 additional years. The RFP stated that, in order to be considered acceptable for award, offerors were required to submit credentials packages for each dentist and to designate the location for which each dentist was offered. After proposals were judged to be technically acceptable, individual contracts would be awarded on the basis of the lowest total price for the basic contract period and all options at each location.

044390/137755

The Air Force received 37 proposals. A committee reviewed the credentials submitted for each dentist, and provided a list of acceptable and unacceptable dentists to the contracting officer, who then selected the apparent successful offerors at each site based on offering the low total price at a site and having submitted approved credentials for the required number of dentists at that site. In accordance with the RFP, notices of conditional award were sent to nine offerors, inviting each to submit notarized letters from the dentists they proposed to use stating that the dentists intended to begin work at a particular site by October 3, 1988, the RFP's starting date for performance.

Med-National was the apparent successful offeror at 29 sites. After receiving a notice of conditional award, the protester obtained letters of intent from 36 of the 46 dentists which it initially had proposed for the 29 sites, but could not obtain letters of intent from 10 dentists. Consequently, Med-National contacted 10 dentists whose credentials had not been originally submitted as part of that firm's proposal, but had been submitted by other offerors under the solicitation, and who had passed the credentials review. Med-National reviewed and submitted to the Air Force letters of intent from those substitute dentists.

On September 5, 1988, the contracting officer determined that under the terms of the solicitation Med-National could only use those dentists it had originally submitted, and rejected Med-National's offer as technically unacceptable for the nine locations at which substitute dentists had been submitted. Med-National filed a protest in our Office on September 19, arguing that the RFP allowed it to substitute dentists that had passed the credentials review, even if another offeror initially had submitted the names and credentials of those dentists.

The Air Force contends that Med-National's protest should be dismissed as untimely because the contracting officer told a Med-National representative on August 29, 1988, that the solicitation did not allow Med-National to submit letters of intent from dentists that Med-National had not proposed in its initial offer. The Air Force argues that since Med-National's protest was not filed until September 19, more than 10 working days after Med-National knew its basis for protest, it is untimely under our Bid Protest Regulations, which require that a protest of other than an apparent solicitation impropriety be filed within 10 working days after the basis for the protest is known. 4 C.F.R. § 21.2(a)(2) (1988).

Med-National denies that the contracting officer told its representative on August 29 that only dentists originally listed in its proposal could submit letters of intent to work for Med-National. The protester has submitted an affidavit from its executive vice-president stating that the conversation was general, regarding the use of a dentist's credentials by more than one offeror, and that it did not put Med-National on notice that such use was not allowed. According to Med-National, it was not informed that its proposal had been rejected in part because of the use of substitute dentists until the contracting officer met with the firm's president on September 9.

We consider the protest to be timely because it is not clear from the record when Med-National first became aware of the basis for protest. It is our practice to resolve doubts over when a protester first becomes aware of its basis for protest in the protester's favor for timeliness purposes. Hooven Allison--Request for Reconsideration, B-224785.2, Mar. 6, 1987, 87-1 CPD ¶ 257. Because the contracting officer did not reject the protester's proposal in part as technically unacceptable until September 5, and the protester contends it was not informed of the basis for this rejection until September 9, we consider the protest to be timely filed within 10 working days after the protester became aware of its basis for protest.

The relevant provisions of the RFP are found in section M, "Evaluation Factors for Award." Paragraph 7 of section M stated, in pertinent part:

"a. Upon identification of the apparent successful offeror at each site, a 'Notice of Conditional Award (NCA)' will be sent to the identified firms/individuals advising them they are the apparent successful offeror and subsequent award will be made to them contingent upon their fulfilling the requirements set forth in this clause.

"b. The firms/individuals receiving a 'Notice of Conditional Award' shall, no later than 3:00 PM on 1 Sep 88, furnish from each proposed FTE at the sites identified in their NCA the following:

i) A notarized letter from the FTE confirming his/her intent to commence work at the Air Force installation (the letter should identify the site) on 3 Oct 88.

ii) A renewal or notarized letter of intent to renew or a copy of submitted application of renewal of any or all of the following documents that will expire prior to 3 Oct 88:

1. Dental License
2. CPR Certification
3. DEA Certification

"c. Failure to provide this information by the date and time specified in subparagraph (b) above shall result in the rejection of the offeror's proposal at the applicable sites (award will still be made on those sites for which the appropriate information was provided). . . .

"d. The identified low offeror may identify other than the originally offered FTE to fill a site, provided the newly offered FTE fulfills the requirements in (b) above and has previously passed the credentials review performed in conjunction with this solicitation. Offerors may not submit an FTE that has not previously been credentialed under this solicitation.

"e. Award will be made to those offerors receiving an NCA and who successfully provide the information required in subparagraph (b) above."

Med-National bases its protest on section M, paragraph 7d, which it argues specifically permits a low offeror to use any dentist who has passed the credentials review under this RFP and who fulfills the requirements in paragraph 7b. Med-National contends that nothing in paragraph 7d prohibits the use of a particular dentist on the basis that the dentist was not part of an offeror's original proposal.

The Air Force disagrees with Med-National's interpretation of paragraph 7d, maintaining that the phrase "newly offered FTE" means a dentist that is new at the site awarded to a particular offeror, but previously included in the particular offeror's proposal. The Air Force argues that when

read in context with the other solicitation provisions, the only reasonable interpretation of paragraph 7d is that any dentist offered must have previously been offered under the same offeror's proposal. The agency relies on section L, paragraph 29, which prohibits offerors from submitting new credentials packages or updates to previously submitted credentials for evaluation purposes after the July 7 closing date for receipt of proposals. The Air Force contends that, because Med-National had not submitted credentials itself for the newly offered FTEs, its proposal for these dentists was not technically acceptable under section M, paragraph 3d, which requires an offeror to provide the credentials for each dentist offered in order to be considered technically acceptable. In the alternative, the Air Force argues that Med-National was prohibited from updating its credential package to include the newly proposed, substitute dentists.

Where, as here, a dispute exists as to the actual meaning of a solicitation requirement, we read the solicitation as a whole and in a manner that gives effect to all its provisions in an effort to resolve the dispute. Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 CPD ¶ 234. In our opinion, Med-National's interpretation of the RFP-- permitting offerors to submit names of dentists that had not been listed in their initial proposal but whose credentials had been determined to be acceptable under this procurement--is correct.

We find no provision in the RFP that prohibits the substitution of dentists after a notice of conditional award has been received, even if the substitute dentists were part of another offeror's credentials package. In fact, paragraph 7d of section M specifically states that the identified low offeror may identify "other than the originally offered [dentist] to fill a site," provided only that the substitute dentist has been approved by the credentials committee in conjunction with this solicitation. The express terms of section M, paragraph 7d state that the only limitation on a proposed awardee's ability to substitute one dentist for another is that the substitute must have been approved by the credentials committee in this procurement.

From a reading of the RFP as a whole, it is clear that the Air Force was, in effect, treating the proposed dentists as interchangeable employees who could be substituted for each other in the event a proposed dentist became unavailable to work for the Air Force for any reason. For example, paragraph L28 expressly allowed an offeror to list a dentist for up to three different locations and also provided that dentists could be listed as "backups" to the first choice where appropriate. Moreover, the RFP did not prohibit any

dentist from being listed in more than one offeror's proposal. Another example is found in paragraph H23 of the RFP which specifically noted that a proposed dentist might become unavailable before the start of performance and, therefore, allowed another credentialed dentist to be substituted for the unavailable dentist after award. In addition, paragraph H20 allows contractors to reassign dentists to new locations and to replace dentists who are reassigned with fully qualified replacements after award. The common thread in each of these substitution situations is that a fully qualified or credentialed substitute has to be provided. In our opinion, these clauses lend further support to our conclusion that Med-National should have been allowed to substitute one credentialed dentist for another once Med-National was evaluated as the low-priced, technically acceptable offeror at any location.

The Air Force's reliance upon paragraph L29--which prohibits submission of new credentials packages or updates of previously submitted credentials packages--to reject Med-National's offer of substitute dentists is misplaced. As Med-National points out, its initial proposal was determined to be acceptable and it did not submit credentials for any dentist after the closing date in contravention of paragraph L29, since the newly offered dentists had already been evaluated and approved in this procurement.

The Air Force argues that allowing Med-National to substitute dentists in this manner puts other offerors who had the expense of providing the credentials packages at a competitive disadvantage. We disagree. Med-National had the same expense, since in order to be found technically acceptable and receive a notice of conditional award in the first place, it submitted credentials packages for the 46 dentists it initially listed. Offerors had the choice of submitting as many or as few dentists and accompanying credentials packages as they wanted under section L28, and could therefore adjust their proposal costs accordingly, but this is a business decision left to each offeror. Just as we have recognized that it is neither unusual nor inherently improper for an awardee to recruit and hire personnel employed by an incumbent contractor that was also a competing offeror, we believe that a conditional awardee such as Med-National may recruit dentists initially submitted by other offerors, since there was nothing in the RFP to prohibit the practice. See Applications Research Corp., B-230097, May 25, 1988, 88-1 CPD ¶ 499.

Accordingly, we sustain Med-National's protest and by letter of today to the Acting Secretary of the Air Force, we recommend that the Air Force award Med-National contracts for the nine locations at which Med-National offered qualified substitute dentists. In addition, we find that Med-National is entitled to the cost of filing and pursuing the protest, including attorneys' fees. See 4 C.F.R. § 21.6(d)(1).

The protest is sustained.



for Comptroller General
of the United States