

L. Thorsby



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Metrolina Medical Peer Review Foundation

File: B-233007

Date: January 31, 1989

DIGEST

1. In reviewing protests concerning the evaluation of technical proposals, the General Accounting Office will not substitute its judgment for that of agency's evaluators but will examine the record to determine whether the evaluators' judgments were reasonable and in accordance with the listed criteria and whether there were any violations of procurement statutes and regulations.
2. Improper action will not be attributed to an agency's procurement officials on the basis of unsupported allegations, inference or supposition. Furthermore, General Accounting Office will not conduct an independent investigation in connection with a bid protest in order to substantiate a protester's speculative allegations.
3. Allegation that agency did not state a common cut off date for best and final offers (BAFO) is denied where evidence in the record indicates that agency notified both offerors early the same morning that deadline for submission of BAFOs was extended to the following day at 2 p.m.

DECISION

Metrolina Medical Peer Review Foundation, Inc. (Metrolina), protests the award of a contract to Medical Review of North Carolina, Inc. (MRNC), under request for proposals (RFP) No. HCFA-88-054/PG, issued by the Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS). The awardee became the utilization and quality control peer review organization (PRO) for the Medicare program in the state of South Carolina. The PRO's duties include the implementation and operation of a review system to eliminate unreasonable, unnecessary and inappropriate care provided to Medicare beneficiaries and to assure the quality of services for which payment is made under Medicare.

We deny the protest.

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The RFP, issued on July 21, 1988, solicited technical and fixed-price proposals. Only Metrolina and MRNC submitted proposals by the August 19 due date and both were found unacceptable but capable of being made acceptable. Written discussions were initiated with both offerors on September 7, 1988. The evaluation panel found the revised proposals submitted on September 14 to be still unacceptable and suggested further areas for discussion. Oral discussions were conducted with both offerors on September 27, and best and final offers (BAFO) were received by September 29. On September 30, the evaluation panel concluded that the revised proposals were both technically acceptable and award was made to MRNC.

Metrolina protests that MRNC's proposal did not conform to the material terms of the RFP and should have been rejected as technically unacceptable. Specifically, Metrolina alleges that MRNC's proposal did not comply with the RFP's instructions regarding personnel because it failed to identify key personnel under the contract and failed to provide information regarding the experience of such key personnel. Metrolina asserts that MRNC did not document the educational background, professional experience and special qualifications of its proposed project director; did not provide resumes for review and data staff positions, did not describe the types and specialties of peer reviewers and their availability to perform review; and did not submit any information evidencing the commitment of its key personnel to work on the contract.

Since the evaluation of technical proposals is inherently a subjective process, in reviewing protests of allegedly improper evaluations, our Office will not substitute its judgment for that of the agency's evaluators but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accordance with the listed criteria and whether there were any violations of procurement statutes and regulations. Dalfi, Inc., B-224248, Jan. 7, 1987, 87-1 CPD ¶ 24. The protester bears the burden of showing that the evaluation was unreasonable, and mere disagreement with the agency does not render the evaluation unreasonable. Id. Further, where a protest is founded, in part, on allegations of informational deficiencies, we look first at the extent to which the solicitation called for detailed information. New Mexico State University, B-230669.2, June 2, 1988, 88-1 CPD ¶ 523.

The pertinent section of the RFP here, Section L-3 (D) Technical Proposal Instructions, Personnel, provided that:

"The proposal shall contain a section that describes the educational background, professional experience, and special qualifications of the project director, subcontractors, peer reviewers, review and data staff, consultants, and other personnel to be involved in the contract. Written agreements with personnel or organizations shall be included in the proposal as evidence of their commitment to perform work for the offeror. The proposal shall specify how the personnel will be utilized and the percentage of time they will devote to the contract. For unfilled positions, the offeror must include job descriptions and minimum qualifications."

Section L-3 (F) Technical Proposal Instructions, Key Personnel, further provided that "The proposal must include information on the key person who will have responsibility for overall management of contract activity, hereafter referred to as the Project Director."

The record shows that, contrary to Metrolina's speculation, MRNC submitted for the Project Director position the resume of MRNC's current project director on MRNC's North Carolina peer review contract. The proposal and resume described the educational background, professional experience and special qualifications of the Project Director.

Furthermore, contrary to Metrolina's assertions, our in camera review of the record also reveals that MRNC did not describe the types and specialties of peer reviewers in its proposal, and included, in its September 14 revision, 189 physician consultant information forms from South Carolina physicians that constituted written agreements to perform reviews for MRNC. MRNC also included job descriptions (including minimum qualifications) for peer review medical leadership and review and data staff positions. These descriptions included, for example, the following positions: Director of Medical Affairs, Medical Advisor, Internal Review Manager, South Carolina Field Review Manager, DRG/Quality Assurance Supervisor, Ambulatory Review Supervisor, Ambulatory Review Specialist, Information Systems Manager, and Data Coordinator. Resumes indicating currently employed or proposed employees were included for some positions, while other positions were unfilled.

In our view, the RFP clearly envisioned that an acceptable proposal could be submitted with unfilled positions, since it provided that ". . . For unfilled positions, the offeror must include job descriptions and minimum qualifications." Furthermore, RFP Section M-2, Technical Evaluation Criteria, specified that Personnel was worth only 150 of a possible 2,100 points. Thus, the extent to which an offeror satisfied the RFP requirements would be reflected in the point score assigned to the proposal by the technical evaluators. That is, the extent to which an offeror's proposal showed unfilled positions, or evidenced lack of commitments from personnel to perform work for the offeror, could properly be accounted for in the score assigned the offeror. As the record indicates MRNC received substantially less than the 150 points allotted by the RFP for personnel evaluation purposes, we cannot conclude the evaluation of MRNC's proposal in regard to personnel was unreasonable or contrary to the RFP provision.

Metrolina also alleges that the evaluation of proposals was biased because of highly prejudicial statements made by the Director, Health Standards and Quality Bureau, HCFA, about Metrolina at a meeting of the American Medical Association's Council on Medical Staffs on August 18, the day before initial proposals were due. Metrolina asserts, "upon information and belief," that the Director told the attendees that because of the current peer review organization's (Metrolina's) incompatibility with South Carolina providers of hospital services, it would not receive the contract for which the RFP was issued.

HHS responds that the Director was not involved in the evaluation of proposals, and provides a declaration from the Director denying that he made any statement at the August 18 meeting to the effect that Metrolina would not receive award of the peer review contract for South Carolina. The Director also states in the declaration that he asserted no influence over the evaluation of proposals.

Metrolina comments that because the Director's responsibilities include the overall management of the peer review program, it is ridiculous to think the Director would not or could not have a direct influence over the selection of peer review organizations. Metrolina notes that the agency report states no documents exist which are responsive to Metrolina's request for materials relating to the Director's speech, and urges our Office to investigate whether any materials regarding the Director's speech exist.

We find that the protester has provided no credible evidence in support of its allegation of bias in the evaluation of proposals. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference or supposition. Mictronics, Inc., B-228404, Feb. 23, 1988, 88-1 CPD ¶ 185. Furthermore, we will not conduct investigations for the purpose of establishing the validity of a protester's speculative statements. Louisiana Foundation for Medical Care, B-225576, Apr. 29, 1987, 87-1 CPD ¶ 451.

Metrolina also contends that it was competitively disadvantaged because HHS did not impose a common cut-off date and time for the submission of best and final offers. According to Metrolina, both offerors were notified by telephone on September 27 that best and final offers, containing necessary proposal revisions, were due on September 28 at 2 p.m., later extended to 5 p.m. on September 28. Metrolina states that it received word on the morning of September 28, after it had forwarded its materials to HHS, that the BAFO deadline had been extended to September 29. Metrolina alleges, "upon information and belief," that the extension was secured by MRNC after discussions with HCFA the night of September 27, but no notice was given to Metrolina until the following morning.

HHS responds that on September 28, prior to 8:30 a.m., both offerors were contacted and advised that the deadline for receipt of BAFOs was extended to 2 p.m., September 29. HHS states that it did not discuss the BAFO deadline with MRNC prior to the time it was granted, and explains that the extension was granted because the contracting officer determined that insufficient time had been provided to the offerors to make necessary revisions to their proposals. HHS notes that when it contacted Metrolina on the morning of September 28, it was advised that Metrolina's representative had just left for the airport with its BAFO. HHS states that it asked Metrolina to contact its representative at the airport to notify him of the change in the deadline for receipt of BAFOs.

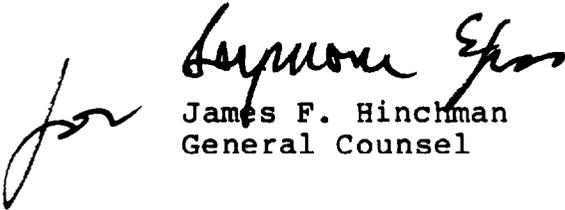
The record contains telephone call records prepared by HHS in the ordinary course of business indicating that HHS contacted both offerors on September 28, prior to 8:30 a.m., to advise that the deadline for receipt of BAFOs was extended to 2 p.m., September 29. The evidence, therefore, fails to show that Metrolina and MRNC were treated unequally and denied the same opportunity to submit BAFOs by September 29. See Great Lakes Roofing Co., Inc., B-228484, Feb. 2, 1988, 67 Comp. Gen. ___ (1988), 88-1 CPD ¶ 100.

Though Metrolina comments that it was in effect penalized for submitting its BAFO early on the original date, it was Metrolina which chose not to take advantage of the additional time to make any further revisions to its BAFO. Accordingly, we deny this protest ground.

Metrolina also alleges that HCFA engaged in improper unilateral discussions with MRNC when the Administrator of HCFA met with officials of the South Carolina Medical Association, which publicly endorsed MRNC for the contract award.

HHS reports that the HCFA Administrator, at the request of two senators, met with representatives of the South Carolina Medical Association on October 3 to discuss concerns about Medicare physician reimbursement, and supports its position with a September 30 memorandum describing the meeting's agenda. HHS states that the meeting was with the South Carolina Medical Association, not MRNC, and that it is reasonable to expect the HCFA Administrator, who has responsibility for Medicare and Medicaid programs nationwide, to have frequent contacts with state medical associations. HHS reports that the HCFA Administrator discussed issues unrelated to the procurement, and that the contracting officer did not participate in the discussions and was never made privy to them. Metrolina has furnished no probative evidence to the contrary. We therefore have no basis to consider the protester's speculation in this regard. See IPEC Advanced Systems, B-232145, Oct. 20, 1988, 88-2 CPD ¶ 380.

The protest is denied.

 James F. Hinchman
General Counsel