Unsecret

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Medical Care Development

File: B-235299

Date: August 17, 1989

DIGEST

1. Agency reasonably relied on awardee's representations that it was a physician-sponsored organization and therefore entitled to evaluation preference in accordance with the terms of the solicitation, notwithstanding the protester's unsubstantiated allegations to the contrary.

2. Agency acted reasonably in not crediting protester's administrative experience where the stated evaluation criterion relating to experience was limited to peer review experience--the principal purpose of the procurement.

3. Contracting officer had a reasonable basis for concluding that competing proposals were not technically equal and, therefore, was not required to award to the low-priced offeror in accordance with the award methodology set forth in the solicitation.

DECISION

Medical Care Development protests the award of a fixed-price contract to Health Care Review, Inc., under request for proposals (RFP) No. HCFA-88-072/GF, issued by the Health Care Financing Administration (HCFA), Department of Health & Human Services, for peer review of certain federally-funded health care services provided to beneficiaries in the State of Maine. The protester alleges that the evaluation of proposals and the selection decision were defective.

We deny the protest.

The RFP contemplated a contract for the review of health care services and provided that, in determining which offer would be considered most advantageous for this purpose, technical merit would be given paramount evaluation consideration rather than price. To this end, the

solicitation set forth a scoring methodology in which the maximum number of possible points was 2,300, of which 2,000 points (87 percent) were obtainable in 16 separate technical categories, while price accounted for a maximum of 300 points (13 percent).1/ Relevant to the issues raised in this protest were the technical scoring category in which an offeror could obtain 100 points if it established that it was a "physician-sponsored organization," and the category in which an offeror could obtain up to 200 points for its experience related to the RFP scope of work.

Medical Care and Health Care submitted the only offers received in response to the RFP. Each was evaluated and initially determined to be technically unacceptable but capable of being made acceptable. Following a round of discussions, responses and reevaluations, both proposals were determined to be technically acceptable. Best and final offers (BAFOs) were then requested; the final prices and scoring were as follows:

Offeror	Price	Price Score	Technical Score	Total Score
Health Care	$ 3,588,013	214	818	1,032
Medical Care	$ 2,785,596	300	600.25	900.25

Health Care's proposal was determined by the contracting officer to be technically superior to the protester's, and the firm was awarded a contract effective April 1, 1989.

Medical Care first objects to the awardee having received 100 technical evaluation points for being a physician-sponsored organization. The additional evaluation points set forth in the RFP are specifically authorized by 42 C.F.R. § 462.102 (1988), which also provides in pertinent part that, in order to qualify for the preference, an offeror must present documentation demonstrating that it is composed of at least 20 percent of the practicing physicians area to be reviewed (i.e., Maine). Health Care's proposal contained a letter from Maine health officials stating that there are 2,100 practicing physicians in the state, together with a membership list of approximately 640 names which were represented as being doctors in Maine. The agency evaluators relied on this evidence, which, on its face, indicates

1/ Price could only become more important to the award analysis in the event that competing proposals were determined to be technically equivalent.

that Health Care was composed of 31.5 percent of the state's practicing physicians, in determining that the organization qualified for the evaluation preference.

The protester objects to this aspect of the evaluation for two reasons: first, Medical Care states that, on the basis of its own review of the awardee's membership list, an unspecified number of doctors are no longer licensed or otherwise practicing in Maine; second, Medical Care contends that the agency acted improperly in relying on the awardee's representations without further verification.

It is not the function of this Office to score proposals; rather, we examine an agency's evaluation to insure that it was reasonable and consistent with stated evaluation criteria. William B. Hackett & Assocs., Inc., B-232799, Jan. 18, 1989, 89-1 CPD ¶ 46. In this regard, the record must show that an evaluation was unreasonable, and this is not accomplished by the protester's mere disagreement with the agency's judgment. Id. Moreover, an agency may reasonably rely on an offeror's representations to the effect that it is entitled to an evaluation preference contained in an RFP, unless there is reason to believe the representations are inaccurate. See DH Indus., B-232963, Jan. 25, 1989, 89-1 CPD ¶ 80.

The protester's own partial review of Health Care's membership list contains no specifics as to which, or how many, of its listed doctors allegedly no longer practice in Maine. In this regard, we note that over 200 of its listed members would have to be no longer practicing for the awardee not to qualify. In addition, its unspecified allegations of past problems with the awardee are in contrast to the agency's reported satisfaction with the organization as the incumbent peer review contractor. Such unsubstantiated allegations provide no basis for concluding that the agency acted improperly in relying on the awardee's representations regarding its status as a physician-sponsored organization. See DH Indus., B-232963, supra. Accordingly, we do not find that HCFA's technical evaluation was unreasonable in this regard. William B. Hackett & Assocs., Inc., B-232799, supra.

Next, Medical Care objects to not receiving any evaluation credit for the experience outlined in its proposal, which it describes as including data processing, community relations, beneficiary communications and interactions with physicians and health care providers. Noting that the RFP's scope of work was expanded over those used in the past to include the performance of such functions, the protester argues that, in completely discounting its experience in these areas, HCFA

ignored the RFP provision which states that "the offeror's experience shall be evaluated based on how relevant this experience is to the Scope of Work to be performed in the contract." Also, Medical Care argues that, in limiting evaluation credit to peer review system experience, HFCA effectively used evaluation criteria which were not set forth in the RFP.2/

In response, the agency agrees that the applicable scope of work was expanded to some extent over versions used in previous years, but argues that the addition of certain functions in which Medical Care may have had some related experience does not alter the fact that the principal purpose of the RFP's scope of work remains to provide for medical and quality reviews on a case-by-case basis to determine the appropriateness of payment--experience that the protester admittedly does not have.

Our review of the scope of work section of the RFP discloses that it principally describes medical and quality review functions that a contractor would be expected to perform. The types of activities for which Medical Care seeks evaluation credit (e.g., experience related to professional/ beneficiary outreach programs) are specifically defined in the RFP as "administrative activities," which themselves are to be performed only in support of "review activities." Moreover, we note that the specific RFP criterion which describes what experience may be scored in the evaluation is phrased in terms of an offeror's public and private "review experience," not in terms of "administrative activities." Accordingly, we believe that the agency acted in accordance with the stated evaluation criterion in assessing Medical Care's experience; the fact that the protester disagrees with the evaluation in this regard does not render it unreasonable. William B. Hackett & Assocs., Inc., B-232799, supra.

2/ The protester also complains that one evaluator initially awarded 99 points for its experience and later reduced the figure to zero, and surmises that he was, therefore, improperly ordered by HFCA officials to change his score in contravention of the RFP criteria. Our review of the evaluation record, including individual scoring sheets, discloses that a number of evaluators' scores affecting both offerors were reduced after the members of the evaluation panel met, as planned, to discuss the scoring. In our view, there is nothing inherently improper in such a process and the protester's speculation to the contrary does not support a different conclusion. See Hi-Q Envtl. Prod. Co., B-229683, Mar. 22, 1988, 88-1 CPD ¶ 295.

Medical Care also contends that, since the chairperson of the evaluation panel indicated at one point in the evaluation process that the competing offers were "very nearly comparable," the contracting officer was obliged to regard them as technically equal and, pursuant to the RFP method of award provisions, make his selection decision solely on the basis of Medical Care's low price.

Pursuant to the method of award outlined in the RFP, price alone could become determinative in the event that proposals were found to have no significant technical differences. Although at one point the chairperson of the evaluation panel did discuss the comparability of the competing proposals, we note that contracting officers are not bound by the recommendations made by their technical evaluators. PRC Kentron, Inc., B-230212, June 7, 1988, 88-1 CPD ¶ 537. As the record reflects, the contracting officer specifically determined Health Care's proposal to be technically superior to the protester's; as long as he had a reasonable basis for reaching this conclusion, it is legally unobjectionable. See Maschoff, Barr & Assocs., B-228490, Jan. 26, 1988, 88-1 CPD ¶ 77.

Although the protester disagrees, the record reflects that the contracting officer had ample justification for concluding that the awardee's proposal was technically superior to its own. For example, as the memorandum in support of the selection decision indicates, the awardee's technical score was 36 percent higher than the protester's; and in the areas of preadmissions and intervening care, objectives, and experience/personnel, the evaluation record shows that Health Care had a decided advantage over Medical Care. We, therefore, are presented with no basis upon which to question the contracting officer's judgment that the awardee's proposal presented the most advantageous offer to the government in accordance with the selection methodology contained in the RFP. See Instruments & Controls Serv. Co., B-235197, July 31, 1989, 89-2 CPD ¶ ___.

Finally, the record shows that the price scoring formula printed in the RFP was in obvious error and mathematically unworkable, and the protester did not question the provision prior to award. The solicitation formula called for the lowest-priced offer to receive the maximum number of price points possible--300--and this number was, in fact, assigned to Medical Care for final evaluation purposes. A literal application of the rest of the erroneous solicitation formula, however, would have resulted in Health Care receiving approximately 299 points, even though its price was about 22 percent higher than the protester's. Instead

of accepting this untenable result, the agency evaluators substituted a formula which resulted in the awardee receiving 214 price points, or 28.6 percent fewer than the protester, for its higher price--a result which we think is reasonably calculated to assess the significance of the price difference between the competing proposals.

Medical Care suggests that HCFA did not go far enough in reducing the awardee's price score, but does not indicate how, or to what extent, a further reduction should have occurred. Under these circumstances, and in light of the decided technical scoring advantage of 218 points held by Health Care, we have no basis to conclude that the protester was prejudiced by the method actually used to calculate price scores.

The protest is denied.

for James F. Hinchman
General Counsel