

Glass



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Louisiana Physicians for Quality Medical Care, Inc.
File: B-235894
Date: October 5, 1989

DIGEST

1. Award to higher priced, higher technically rated offeror is not objectionable where the solicitation award criteria made technical considerations more important than price, and the agency reasonably concluded that the awardee's superior proposal provided the best overall value.
2. Contracting agency's action in convening a second technical evaluation panel was reasonable where the agency considered the chairperson of the first panel to have a potential appearance of conflict of interest because of the individual's prior working relationship with the chief executive officer of the protester.

DECISION

Louisiana Physicians for Quality Medical Care, Inc., protests the award of a contract to Louisiana Health Care Review, Inc., the incumbent contractor, under request for proposals (RFP) No. HCFA-89-006/PG, issued by the Health Care Financing Administration, Department of Health and Human Services. The RFP was issued for the operation of a peer review organization (PRO) for the state of Louisiana.^{1/} Louisiana Physicians essentially objects to the award because its offered price was lower than the awardee's. We deny the protest.

The RFP contemplated the award of a 3-year firm, fixed-priced contract with fixed unit rates per review category. The RFP stated that award would be made to the responsible offeror whose conforming offer is determined to be the most

^{1/} The PRO reviews both the quality and utilization of health care resources and services which are provided to Medicare beneficiaries.

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advantageous to the government in terms of technical merit, cost or price and other factors. The RFP stated that "paramount consideration" would be given to "technical merit/excellence" rather than to the proposed price. The RFP listed the specific technical evaluation criteria and their corresponding point values. The evaluation criteria included review activities, health maintenance organization review, experience, personnel, and management plan. Although the RFP stated that proposed price will be considered independently of the technical criteria, the RFP contained a precise formula for the calculation of points for the price evaluation and for the total possible points that could be achieved, including the points for the price evaluation.

Two firms--the awardee and the protester--of 12 firms solicited submitted proposals in response to the RFP. The proposals were evaluated by two consecutively appointed evaluation panels. Only the scoring of the second panel was used in the award selection decision. After discussions and the evaluation of best and final offers (BAFOs), both proposals were determined to be technically acceptable with the following scores and prices:

	<u>Technical Points</u>	<u>Price</u>
Louisiana Health	763.50	\$14,182,877
Louisiana Physicians	573.25	\$13,160,056

After applying the RFP price formula, the following scores (combined technical and price) resulted:

	<u>Total Points</u>
Louisiana Health	1,040.50
Louisiana Physicians	873.25

Thus, evaluators gave Louisiana Health the higher technical score. Further, applying the formula contained in the RFP, Louisiana Health received the higher number of total points despite its slightly higher price. The Source Selection Authority recommended award to Louisiana Health based on the technical superiority of its proposal. Award was thereafter made to Louisiana Health.

In its protest, Louisiana Physicians objects to the award on the ground that its offered price was lower than the awardee's, and that its lower price should have been afforded greater weight in the evaluation.

In a negotiated procurement, the government is not required to make award to the firm offering the lowest cost unless the RFP specified that cost will be the determinative factor. University of Dayton Research Inst., B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178. We have upheld awards to higher rated offerors with significantly higher proposed costs, where it was determined that the cost premium was justified considering the significant technical superiority of the selected offeror's proposal. Id. In assessing the relative desirability of proposals and determining which offer should be accepted for award, the procuring agency has the discretion to select a more highly rated technical proposal if doing so is in the government's best interest and is consistent with the evaluation scheme set forth in the solicitation. Comarco, Inc., B-225504 et al., Mar. 18, 1987, 87-1 CPD ¶ 305.

After reviewing the evaluation documents, we find that the agency's evaluation was reasonable and in conformance with the evaluation scheme set forth in the RFP. The record shows that the technical criteria represented over 80 percent of the total evaluation, while price represented approximately 20 percent.^{2/} Louisiana Health's proposal was evaluated as technically better than that of Louisiana Physicians. The evaluators found that Louisiana Health presented a well developed retrospective review plan and admission review plan. Louisiana Health's quality review plan was considered to have demonstrated a good understanding of the problem identification and quality intervention processes. Further, Louisiana Health's management plan provided a thorough description of how the organization would be directed toward accomplishing the RFP requirements.

On the other hand, the evaluators found Louisiana Physicians' management plan to be deficient in that it did not thoroughly describe the administrative controls, program coordination and direction of the resources in sufficient detail to demonstrate the organization's capability to accomplish all required tasks. Louisiana Physicians'

^{2/} To the extent the protester argues that price should have been afforded greater weight, its protest is untimely. The RFP specifically revealed the relatively low value to be given the price factor. Protests of apparent alleged solicitation defects must be protested prior to the closing date for receipt of proposals, and Louisiana Physicians did not protest until after award. See 4 C.F.R. § 21.2(a)(2) (1989); Schuelke & Assocs., Inc., B-231389, Sept. 2, 1988, 88-2 CPD ¶ 210.

interaction plan and quality intervention plans were also found deficient in that the protester did not fully demonstrate an understanding of these requirements. Moreover, Louisiana Physicians, in its protest, does not take exception to the technical evaluation of its proposal.

In our opinion, the technical evaluation was reasonable based upon the proposals submitted. The protester has not even attempted to show otherwise. Louisiana Physicians' proposal simply was not evaluated to be as good as Louisiana Health's proposal, and the agency reasonably determined that it would receive better services from Louisiana Health at the premium price. The award to Louisiana Health was consistent with the RFP scheme, which specifically stated that technical excellence would be the paramount consideration.

Concerning the evaluation, the protester also challenges the award of a 100 point bonus by the evaluation panel to Louisiana Health for qualifying as a physician sponsored organization.^{3/} The protester contends that Louisiana Health was not a physician sponsored organization during the previous contract period and that Louisiana Health's method of recruiting physician participation for this requirement was wrought with confusion and misrepresentation.

As previously stated, we will examine an evaluation of proposals only to ensure that it was reasonable and consistent with the stated evaluation criteria. The RFP provided for 100 points to be given to an offeror who satisfactorily demonstrates that it qualifies as a physician sponsored organization. Both offerors were awarded the 100 points because the evaluation panel determined that both offerors met the applicable requirements. In making this determination, the panel relied on the representations in the offerors' proposals with respect to the number of physician members claimed. The agency states that the mechanisms used by both offerors to enroll physician members were acceptable and that they had no reason to question their validity. We have no basis to object to the agency evaluation in this regard.

^{3/} The agency's regulation, 42 C.F.R. § 462.102 (1988), defines a physician sponsored organization as one composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area and who are representative of the physicians practicing in the area.

Louisiana Physicians next argues that the agency's convening of a second panel to evaluate proposals was inappropriate and prevented accurate evaluation of the proposals. The agency responds that the technical proposals were initially sent to the Office of Peer Review for evaluation by a panel composed of the Project Officer and a nurse reviewer from the Dallas Regional Office as well as two other members of the central office. The agency subsequently became concerned over a potential appearance of conflict of interest between the chairperson of the panel (a non-voting member) and the chief executive officer of Louisiana Physicians, since both had worked together in the Dallas Regional Office for several years. Consequently, the agency decided to convene a new panel to evaluate the proposals. The second panel consisted of three program analysts from the program's central office in Baltimore, Maryland, and one representative from Region II in New York.

While the protester contends that there were no allegations that any of the voting members of the initial panel had any bias, the procuring agency bears the responsibility for balancing the competing interests of the procurement process between preventing possible bias and awarding a contract that is most advantageous to the government. See NAHB Research Found., Inc., B-219344, Aug. 29, 1985, 85-2 CPD ¶ 248. We will not disturb the agency's determination in such a matter unless it is shown to be unreasonable. Id. In view of the potential appearance of conflict of interest that existed with respect to the chairperson of the first panel, although not a voting panel member, we believe that the agency's action in convening a new panel has not been shown to be unreasonable.

The protester also argues that the second technical evaluation panel lacked knowledge of Louisiana Health's history of unsatisfactory performance under the previous contract. The protester contends that the original panel knew of Louisiana Health's past history of deficiencies and that Louisiana Health's inability to perform under the prior contract should have been considered by the second panel.

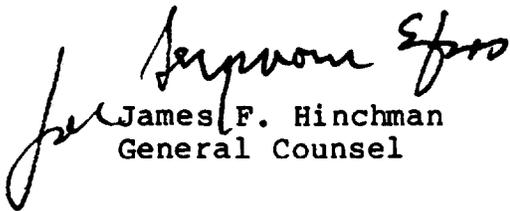
The record indicates that both the first and second panels were aware of Louisiana Health's prior performance, but did not conclude that it warranted the downgrading of Louisiana Health's technical proposal. In this regard, Louisiana Health denies that its performance was unsatisfactory in view of the significant backlog of cases that the firm inherited from the preceding contractor.

To the extent that Louisiana Physician's protest challenges Louisiana Health's ability and capacity to perform, it

involves the issue of Louisiana Health's responsibility. Our Office will not review protests against affirmative determinations of responsibility unless either possible fraud or bad faith on the part of procuring officials is shown or the solicitation contains definitive responsibility criteria which allegedly have been misapplied. 4 C.F.R. § 21.3(m)(5); Yale Materials Handling Corp.--

Reconsideration, B-226985.2 et al., June 17, 1987, 87-1 CPD ¶ 607. Here, the agency determined that Louisiana Health was a qualified source that possessed the technical ability to perform and was financially capable. In this regard, an offeror's prior performance is only one of several relevant factors that should be considered by the agency when reviewing a prospective contractor's responsibility. See FAR § 9.104-1 (FAC 84-18); C.W. Girard, C.M., 64 Comp. Gen. 175 (1984), 84-2 CPD ¶ 704. Again, an affirmative determination of responsibility, made after consideration of prior performance, is not reviewable by this Office, except under circumstances not shown here.

The protest is denied.


James F. Hinchman
General Counsel