

14-189



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cotton & Company

File: B-236452

Date: December 11, 1989

DIGEST

Protest that disagreement with agency concerning solicitation's data disclosure provision caused the agency to be biased in its technical evaluation of the protester's proposal is denied where there is no evidence of bias in the record.

DECISION

Cotton & Company protests the award of a contract to any other offeror under request for proposals (RFP) No. DAS-89-003 issued by the Department of Health and Human Services for accounting services for the review of third party liability payments under the Medicaid Program. Cotton contends that the agency improperly required it to comply with an RFP provision concerning the disclosure of proposal data and that the agency's evaluation of its proposal was biased.

We deny the protest.

The RFP, issued on April 7, 1989, contemplated the award of a cost-plus-fixed-fee contract. It provided that in the award selection technical and cost factors were to be of approximately equal weight. The agency received 11 proposals by the May 12 closing date. As a result of the evaluation of initial proposals, three offers, including Cotton's, were determined to be in the competitive range. In its initial proposal, Cotton included a Disclosure Restriction provision that was inconsistent with the RFP's "Restriction on Disclosure and Use of Data" clause because it provided that Cotton's offer could not be photocopied under any circumstance. According to Cotton, the contracting officer initially told it that the modification was acceptable. During discussions, however, the agency informed Cotton that its proposal would be rejected if its disclosure statement did not conform to the RFP's disclosure

requirements. Cotton responded in its best and final offer (BAFO) with the disclosure statement specified in Federal Acquisition Regulation (FAR) § 52.215-12. The FAR provision differs from the RFP provision (which the agency used pursuant to its own acquisition regulation--see 48 C.F.R § 353.215-12 (1988)) primarily with respect to the government's right to release proposal data under the Freedom of Information Act.

Cotton, without waiting for the agency to evaluate BAFOs, then protested, contending that the agency was biased in its scoring of the firm's proposal because of the protester's refusal to comply with the RFP's disclosure statement. Cotton also asserts that its proposal may not be rejected merely for failing to comply with the statement contained in the RFP.

The agency reports that it has now completed evaluation of BAFOs, and that Cotton's proposal is the lowest-rated, highest-cost proposal. The agency asserts, however, that the disclosure clause had no bearing on the technical evaluation of proposals and that the score given to Cotton's proposal is a legitimate reflection of its technical merits.

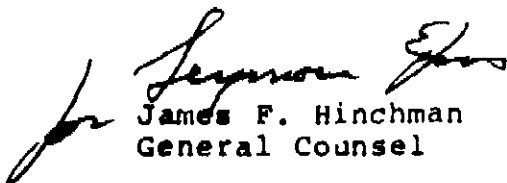
We find no basis for sustaining this protest.

We have carefully reviewed the evaluation record and we find no evidence that Cotton's disagreement with the agency concerning the disclosure statement affected the technical evaluation of its proposal. Cotton's proposal was given an initial score of 62.7, before the dispute over the disclosure statement arose. Cotton's BAFO score, reached after the dispute arose, was 67.0, 4.3 points higher than its initial score. Thus, Cotton's score actually increased after it took exception to the RFP disclosure statement. Moreover, there is no evidence that disclosure matters were considered at all in the technical evaluation; the only mention of disclosure was in the documents concerning the separate "business evaluation," which had no bearing on the technical scoring. Thus, we see no basis for the firm's argument that the dispute affected the agency's scoring of its proposal.

We will not separately address Cotton's arguments concerning the acceptability of its disclosure statement. As indicated above, we have no basis upon which to object to the agency's conclusion that Cotton's proposal, which

included the highest cost estimate, was rated lowest of those within the competitive range. Since Cotton will not be selected for award based on its high cost and low technical rating, even if the agency's view concerning the protester's disclosure provision is erroneous Cotton will not be prejudiced since it is not in line for award.

The protest is denied.


James F. Hinchman
General Counsel