



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

# Decision

**Matter of:** Nationwide Health Search, Inc.  
**File:** B-237029  
**Date:** February 1, 1990

Ms. Janis K. Edwards, Nationwide Health Search, Inc, for the protester.

Lt. Col. Bernard M. Chachula, Office of the Staff Judge Advocate, United States Air Force, for the agency.

Charles W. Morrow, Esq, and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Allegation that proposal was rejected as technically unacceptable due to certain radiological procedures contained in the solicitation which were unduly restrictive and overstated the contracting agency's minimum needs is untimely where the protester did not file its protest until after the award, since the alleged impropriety was apparent from the face of the solicitation.
2. Contracting agency reasonably determined that protester's proposal was technically unacceptable where protester was twice advised of certain deficiencies in its proposal and failed to correct these deficiencies in its second best and final offer, since the protester's protest merely reflects its disagreement with the contracting agency's evaluation.

## DECISION

Nationwide Health Search, Inc., protests the rejection of its low priced proposal under request for proposals (RFP) No. F41613-88-R-0025 issued by Carswell Air Force Base,

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Texas, for radiology services. Nationwide contends that the Air Force improperly determined its proposal to be technically unacceptable due to certain restrictive specifications and bias in the evaluation process.

We dismiss the protest in part and deny it in part.

The RFP was issued on September 28, 1988, and called for the contractor to provide two full time radiologists to perform all radiological procedures listed in the specifications<sup>1/</sup> and associated services at Robert L. Thompson Strategic Hospital. The RFP requires the contractor's radiologists to obtain approval from the Air Force's "Medical Treatment Facility (MTF) Credentials Committee" and advised that credentials and privileges awarded by the MTF were required for the contractor's radiologists to perform all tasks identified in the RFP. The RFP advises that award would be made to the offer most advantageous to the government and that price is slightly more important than technical merit. The technical evaluation factors, listed in descending order of importance, are: (1) past experience and training (2) organizational and personnel resources, and (3) plans and management procedures.

On the closing date for the receipt of initial proposals on December 6, the Air Force received three proposals in response to the RFP. Written discussions were conducted with each offeror and a round of best and final offers (BAFOs) were requested on January 3, 1989. In the written discussions with Nationwide, the Air Force pointed out that each of Nationwide's proposed radiologists were deficient in certain areas, such as ultrasonography, computed tomography, myelography, arthrography, angiography and all had limited technical experience. The Air Force also commented that no schedule was provided on how quickly each radiologist could respond to emergencies as required by the RFP.

After the receipt of BAFOs on January 12, because of a disparity in prices, the Air Force conducted a market

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<sup>1/</sup> The RFP requires each radiologist to be capable of performing the professional services required for radiologic patients, to read, study, interpret, diagnose and consult on x-ray films and to perform diagnostic fluoroscopic, ultrasonographic, computed tomographic, nuclear medicine procedures and magnetic resonance imaging studies.

survey of two area hospitals to determine the fair market price for performing the estimated number of procedures specified in the RFP. A second round of written discussions was conducted on June 1. Again Nationwide was advised of deficiencies in the experience and the credentials of the radiologists that it proposed, as well as the other specific deficiencies in the proposal. Only Nationwide and Consultants in Radiology submitted BAFOs on July 17.

After receipt of BAFOs, the Air Force rejected Nationwide's BAFOs as technically unacceptable for failing to correct the aforementioned deficiencies in its proposal. The Air Force made award to Consultants because it submitted the only technically acceptable proposal and because its price, which was 19 percent below the market survey price, was determined to be fair and reasonable.

In essence, Nationwide argues that the reason that its proposal was improperly determined to be technically unacceptable was because the RFP requires several radiological procedures which will not be performed under the contract and because few radiologists are experienced in all of the required procedures. Furthermore, Nationwide argues that its proposal was determined to be technically unacceptable because the Air Force was biased in favor of Consultants, a local incumbent contractor, and because the specifications and evaluation process allegedly favored Consultants.

To the extent that Nationwide is challenging the propriety of the Air Force's evaluation of its proposal by objecting to the radiological procedures required by the RFP, this aspect of its protest is untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1989), a protest based upon alleged improprieties in a solicitation which are apparent prior to the closing date for the receipt of initial proposals must be filed at either the contracting agency or our Office before the closing date. Institute for Combat Arms and Tactics, Inc., B-237404, Oct. 30, 1989, 89-2 CPD ¶ 397. Here, the restrictiveness and alleged affect of the required radiological procedures on the protester's offer, were apparent from the face of the solicitation. Therefore, we dismiss these post-award protest bases.

We will examine Nationwide's protest of its evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Syscon Servs., Inc., B-235647, Sept. 21, 1989, 68 Comp. Gen. \_\_\_\_\_, 89-2 CPD ¶ 258. However, Nationwide has the burden of affirmatively proving its case and mere disagreement with a technical evaluation does not satisfy this requirement. Id.

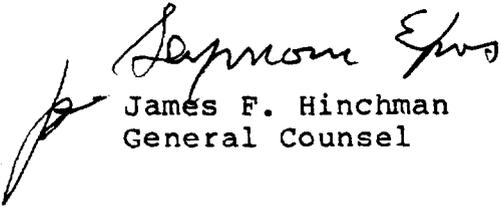
The Air Force found that none of the radiologists proposed by Nationwide possessed all of the necessary critical skills in the areas of ultrasound, angiography, and invasive procedures, such as biopsies, and that none could perform all of the medical procedures required unless the Air Force provided supervision. This led the Air Force to determine that Nationwide may not be able to perform during emergencies, nights, or on weekends. Further, the Air Force found that Nationwide's attempt to address the problem by proposing to utilize the services of consultants was insufficient because Nationwide did not identify these consultant radiologists and because, as previously noted, the RFP required the credentialing of all radiologists performing services under the contract. Also, the Air Force found that Nationwide's proposal did not contain supporting documentation illustrating the ability to provide coverage during absence of the primary radiologists. Accordingly, the Air Force rejected the proposal as technically unacceptable.

We do not find the rejection of Nationwide's proposal to be unreasonable because the RFP's technical evaluation factors specifically advised offerors to provide specific evidence of each radiologist's competence to perform all the required radiological procedures. Further, offerors were advised to provide detailed information on the number of radiologists the offeror proposed to credential, on how the working hours would be scheduled among those radiologists proposed for credentialing, on how quickly each could respond in response to a requirement for emergency support, on other work commitments shared by the radiologists, and on other emergency support commitments. Finally, the Air Force twice advised Nationwide during discussions of the deficiencies in its proposal.

Based upon the RFP's stated technical evaluation factors, we find that Nationwide's protest reflects nothing more than its disagreement with the evaluation that its proposal was technically unacceptable and its dissatisfaction with the fact that Consultants was successful in competing for the contract. We do not find that the evaluation of Nationwide's proposal as technically unacceptable was unreasonable, since the Air Force specifically apprised Nationwide during written discussions of these deficiencies and these deficiencies clearly were based on RFP requirements.

Although Nationwide alleges bias and bad faith on the part of the Air Force in making award to Consultants, Nationwide has not provided any probative evidence for us to find bias or bad faith in the Air Force's decision to make award to Consultants. It is not unusual for a contractor to enjoy an advantage in competing for a government contract by reason of incumbency, and such an advantage, so long as it is not the result of preferential treatment or other unfair action by the government need not be discounted or equalized. Liberty Assocs., Inc., B-232650, Jan. 11, 1989, 89-1 CPD ¶ 29.

The protest is dismissed in part and denied in part.



James F. Hinchman  
General Counsel