



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John Short & Associates, Inc.

File: B-239358

Date: August 23, 1990

Gary J. Krump, Esq., for the protester.
Donald P. Arnavas, Esq., Piper & Marbury, for Coastal Government Services, Inc., an interested party.
David H. Turner, Esq., Office of the General Counsel, Department of the Navy, for the agency.
John Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee's proposal was unacceptable and should have been rejected because it included as a proposed director of emergency care a physician that was unacceptable is denied because the record indicates that the physician, although he later was denied post-award credentialing under the contract, was considered acceptable under the technical evaluation when offered by the protester and by the awardee.
2. When a protester raises new grounds of protest in its comments on the agency's report on the protest, the new contentions must independently satisfy the timeliness requirements in the General Accounting Office's Bid Protest Regulations.

DECISION

John Short & Associates, Inc. protests the award of a contract to Coastal Government Services, Inc. under request for proposals (RFP) No. N00140-89-R-4061 issued by the Navy for the operation of an emergency medicine and ambulatory care (EMAC) department at the Naval Hospital Camp Lejeune, North Carolina. John Short primarily argues that the medical director proposed by Coastal was unacceptable and,

for that reason, Coastal's proposal should have been rejected and the contract awarded to the protester as the lowest priced, acceptable offeror.

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

According to the RFP, the contractor is to furnish all personnel necessary to provide 24-hour a day medical care at the EMAC, which offers daily access into the healthcare system and includes an emergency room and an ambulatory care clinic.

The RFP indicated that a fixed price contract would be awarded to the offeror whose proposal conformed to the solicitation and was most advantageous to the government considering both technical merit and price. Technical proposals were significantly more important than price. The technical evaluation factors, each of which was of equal importance, were as follows:

1. Medical, Nursing, and Healthcare Administration Services.
2. Medical Quality Assurance Plan.
3. Quality Control Plan.
4. Liability Insurance Plan.
5. Triage and Patient Flow Protocols.
6. Patient Education Plan.
7. Patient Complaint System.
8. Recruitment and Organization Plan.
9. Position Descriptions.
10. Staffing Matrix-Emergency Room.
11. Staffing Matrix-Ambulatory Care Clinic.
12. Employee Performance Appraisal System.
13. Experience in Delivering EMAC Services.
14. Professional References.

Under factor eight, offerors were to submit a discussion of the availability of current employees, a recruitment plan, a resume for the "key person," and a diagram of the proposed organization structure. Under factor nine, each offeror was to submit position descriptions for each class of employee to be used in the proposed organization, including qualifications appropriate for that class of employees and involvement in the offeror's medical quality assurance plan.

The solicitation at section C.5.10 indicated that all healthcare providers offering services under the contract would be "subject to the professional staff appointment, clinical privileging and adverse credentials actions/fair hearing/appeals processes of the hospital as specified in the hospital medical staff bylaws, rules and regulations and

in NAVMEDCOMINST [Naval Medical Command Instruction] 6320.8 (Credentialing Program)."^{1/} This Naval instruction, which was included in the solicitation at attachment XVI, indicated that the commanding officer of the medical treatment facility "is the sole authority for granting and revoking privileges" and that he "will not grant clinical privileges until it is determined that credentials information has been satisfactorily verified." According to the solicitation, the firm receiving the award must submit "credentialing documents" for its employees not less than 30 days prior to the start of performance.

The solicitation designated the director of the EMAC as a "key person" and specified in section C.13.2.1 that the director is to be "acceptable to the Commanding Officer" and board certified in emergency medicine. The RFP also provided that he must have 3 years experience of clinical practice in an "Emergency Department" within the last 5 years, demonstrated supervisory experience and shall meet all of the qualifications listed in the RFP for staff physicians.

The Navy explains that under the evaluation factors, the RFP did not call for the evaluation of proposed EMAC directors or of proposal staff doctors in accordance with the qualifications set forth in section C.13.2 or any of the credentialing requirements. According to the Navy, due to the professional nature of the personnel required for performance, it would be impractical to require offerors to propose a full staff months before performance was to begin; it included the Recruitment and Organization Plan factor, including the requirement for a resume for the proposed director, to measure offeror's ability to attract and retain qualified professionals, not the individual's qualifications during the selection process.

Five firms submitted proposals. Based on the initial evaluation, the contracting officer established a competitive range including Coastal, John Short and PHP HealthCare Corporation. After discussions with those three offerors,

^{1/} The solicitation defined credentialing as the process of review and evaluation of a healthcare provider's professional qualifications and demonstrated current competence for the purpose of granting clinical privileges. The process involves the verification of credentials and the observation of clinical skills, recordkeeping, ethics, professional decorum and participation in staff meetings and professional committees.

the Navy sent letters to each identifying the technical deficiencies in their proposals.

In the letter to John Short, dated October 31, 1989, under the Recruitment and Organization Plan evaluation factor, the Navy indicated that John Short provided an incomplete organizational diagram and that "[t]he technical proposal's resume for the key person will not be approved by the Commanding Officer in accordance with C.13.2.1" The Navy explains that, in accordance with the RFP, the "key person" referred to was John Short's proposed director of the EMAC. According to the Navy, the Commanding Officer of the Naval Hospital, who also was a member of the source selection advisory council (SSAC), had been dissatisfied with the proposed director's performance under a previous Navy contract for the same services. Consequently, the Navy reports that the Commanding Officer informed the SSAC that under a contract with John Short the firm's proposed director would be unacceptable under paragraph C.13.2.1 and the post-award credentialing provisions set out in the RFP.

In its November 13 response, John Short proposed a different physician, Dr. Baum, as its EMAC director and the Navy determined that the firm's proposal was acceptable under the Recruitment and Organization Plan factor. However, in a letter dated November 28, the Navy informed John Short under the Position Descriptions factor that "[t]he Government was unable to determine if the Medical Director has sufficient emergency room experience as specified in section J, Attachment XIX. ATLS [advanced trauma life support] for the key person, furthermore, is not documented." John Short revised its offer to include both Dr. Baum's resume and the resume of another physician, Dr. Kornblatt, as director of the EMAC. The Navy determined that John Short's proposal had no further deficiencies under the Recruitment and Organization Plan evaluation factor.

The Navy requested and received best and final offers (BAFOs) from the three competitive range offerors. In its BAFO, John Short proposed Dr. Kornblatt as its director but again included Dr. Baum's resume. Since deficiencies remained in the technical proposals, the Navy held further discussions with the three competitive range offerors.

By letter dated February 20, John Short requested that it "be advised as to the prospective physician qualification determination" with respect to Dr. Baum, the second director the firm had proposed. Specifically, John Short asked if it was reasonable to expect that Dr. Baum would be "credentialed" as a staff physician under attachment XIX of the solicitation. That attachment to the RFP set out

required years of experience, training and certifications for emergency room physicians.

In a request for second BAFOs, dated February 28, the Navy responded to John Short's question regarding Dr. Baum. In relevant part, the Navy stated:

"Within your letter of 20 February 1990, Dr. Baum is described as a key employee, a term which has no meaning within the RFP unless it is meant to be the key person. The technical evaluation committee is not the hospital credentialing authority and cannot judge the acceptability of an individual's credentials. Basic qualification requirements for emergency room physicians are given in Section C, Paragraph 13.4 and in Section J, Attachment XIX. The information provided for Dr. Baum does not include evidence of Basic Cardiac Life Support Certification and whether his experience was gained in an emergency room with not less than 5,000 annual visits per full-time physician. Complete requirements for credentialing by the Naval Hospital are given in Section C, Paragraph 5.10 and Section J, Attachment XVI."

In its second BAFO, John Short proposed Dr. Kornblatt as EMAC director but again included Dr. Baum's resume under the heading "Resume of Key Person." John Short's second BAFO was acceptable under all of the technical evaluation criteria. In its second BAFO, for the first time, Coastal proposed Dr. Baum as its EMAC director. The record indicates that the Navy determined that Coastal's proposal including the resume of Dr. Baum was technically acceptable under all of the criteria.

The Navy determined that the second BAFOs were acceptable and essentially equal. The total prices for the three second BAFOs were \$23,063,783 for Coastal, \$24,018,874 for John Short and \$27,732,449 for PHP. Since the offers were technically equal and Coastal submitted the lowest price, on March 15 the Navy awarded the contract to Coastal as the most advantageous to the government considering technical merit and price.

On March 30, Coastal forwarded to the Naval Hospital Credentials Committee the required information concerning Dr. Baum's credentials. The Navy reports that after reviewing this information in accordance with the credentialing provisions of the RFP, the committee determined that Dr. Baum would not be credentialed as Director of the EMAC.

Under the contract, Coastal was required to submit another candidate, which it did. That candidate was credentialed as Director of the EMAC and Coastal is currently performing the contract.

John Short argues that Dr. Baum was determined unacceptable when proposed as EMAC director by it and thus should have been unacceptable when proposed by Coastal. Therefore, according to the protester, Coastal's second BAFO, which included Dr. Baum as the EMAC director, was unacceptable and, for that reason, the contract should have been awarded to John Short as the low priced technically acceptable offeror. John Short also argues that the Navy had a history throughout the evaluation process of examining proposed EMAC directors and their resumes, reviewing their qualifications and providing feedback to offerors on their proposed directors. According to the protester, as a result of the Navy's manipulation, the qualifications review process and the director selection process did not comply with the solicitation.

While we agree with John Short that the Navy in its discussion letters and as evidenced from the evaluation record itself seemed to place a great deal of emphasis on the qualifications of the firm's proposed EMAC directors, we do not think that the protester was prejudiced by the agency's treatment of its proposal. In this respect, John Short was given feedback by the Navy concerning the qualifications of both its initial proposed EMAC director and later Dr. Baum, and the firm reasonably replaced both. Nevertheless, as far as Dr. Baum is concerned, the evaluation record shows that John Short's proposal was not considered to be unacceptable under the Recruitment and Organization Plan evaluation factor--under which the resumes were to be submitted--because of Dr. Baum. In fact, John Short's rating under that factor was raised from unacceptable to acceptable when Dr. Baum was proposed as EMAC director. The November 28 deficiency letter, which lead the protester to replace Dr. Baum with Dr. Kornblatt as director, indicated that the evaluators' inability to determine the emergency room experience of the director was related to the Position Description factor. It is not clear from the rather sparse evaluation record whether the unacceptable rating under this factor was related to the proposal of this particular individual, or because of deficiencies in the proposed position descriptions. The Navy states that the individual was not the cause and we have no basis to disagree given the fact that resumes were to be submitted in response to the Recruitment and Organization Plan factor rather than the Position Description factor. Thus, we do not believe that the Navy treated

John Short and Coastal unequally in its evaluation under the factor which required the submission of the resume of the proposed EMAC director as both firms were considered acceptable under this factor when they proposed Dr. Baum.

Further, John Short was also not prejudiced as a result of removing Dr. Baum's resume and proposing Dr. Kornblatt as its EMAC director. Dr. Kornblatt also was considered technically acceptable and John Short's second BAFO, which included Dr. Kornblatt as the EMAC director, was acceptable under all 14 technical evaluation factors.

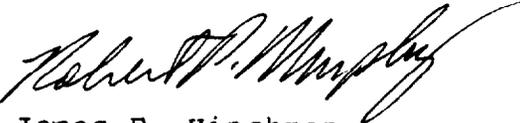
The protester does not argue that changing its proposed director from Dr. Baum to Dr. Kornblatt had any effect on the competition, for instance, by causing it to increase its price. There is nothing in the record to indicate that this was the case. Although John Short increased its price from the first to the second BAFO, the increase, more than \$1 million, is not attributed by the protester to the firm's changing proposed directors.

In its comments on the Navy's report on the protest, John Short argues for the first time that the Navy improperly induced it to raise its prices during discussions, improperly requested a second round of BAFOs and assigned inappropriate weight to past performance in the evaluation. Under our Bid Protest Regulations, a protest must be filed within 10 working days of when the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1990). Further, where as here, a protester supplements a timely protest with new and independent grounds of protest, the later raised allegations must independently satisfy the timeliness requirements. Golden Triangle Management Group, Inc., B-234790, July 10, 1989, 89-2 CPD ¶ 26. The supplementary allegations in John Short's comments are based on the evaluation documents and other information given to the protester in the Navy's administrative report on the protest, which John Short received on May 30. John Short did not raise these new contentions until more than 10 days later when it filed its comments on the report on June 22. Consequently, these issues are untimely and will not be considered.

Finally, John Short argues that we should have directed the Navy to provide it documents relevant to its protest which it requested under the Freedom of Information Act. The Navy released a number of evaluation documents to the protester and John Short has not identified the specific documents which it believes should have been released to it even though the Navy provided the firm with a complete list of documents supplied to our Office. We reviewed the Navy's

response to the protester's document request which included the redaction of some information from agency evaluation documents and we concluded that the protester was given all information that it was entitled to under our Regulations. 4 C.F.R. § 21.3(d).

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



James F. Hinchman
General Counsel