K. Riback
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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Trauma Service Group

File: B-242902.2

Date: June 17, 1991

Joseph F. Nowoslawski, M.D., for the protester.
Herbert F. Kelley, Jr., Esq., and Robert D. Hamel, Esq., Department of the Army, for the agency.
Katherine I. Riback, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office has no legal basis to interfere with agency's determination that protester's offer was not realistic based on the fact that the compensation rates for physicians dramatically declined over the base and 4 option years.

DECISION

Trauma Service Group protests the award of a contract to Coastal Government Services under request for proposals (RFP) No. DADA10-90-R-0029, issued by the United States Army Health Services Command for the healthcare services of General Medical Officers at Army Medical Training Facilities across the United States. The award was for Region I, which includes 10 locations in the Eastern United States.1/ Trauma disputes the Army's conclusion that its price was unrealistic and argues that it should have received the award as the low-priced technically acceptable offeror.

We deny the protest.

On May 22, 1990, the Army issued this solicitation for General Medical Officer's services in Region I, and Region II, Western United States, for a base period and 4 option years. The solicitation contemplated the award of one or two fixed-price indefinite quantity contracts for the two regions.

1/ Culver Health Corporation has protested the award for the services for Region II under the same solicitation. That protest is the subject of a separate decision under file number B-242902.

The RFP listed three evaluation factors, with subfactors as follows:

Factor 1 Personnel Qualifications
- a. Management Qualifications
- b. Employee/Subcontractor Qualifications

Factor 2 Business Management/Understanding of the Requirement/Commitment
- a. Recruitment
- b. Substitute Coverage
- c. Retention

Factor 3 Cost/Price

Price will be evaluated, but not scored, for reasonableness and realism.2/

The solicitation stated that the Factors 1 and 2 were to be of equal importance, as were the subfactors of 1 and 2. The RFP further provided that "among those offers determined to be technically acceptable in each region, award will be made to the offeror who offers the lowest reasonable realistic price and is deemed responsible." Offers were to be priced based on a per hour unit price and a total price based upon the estimated total hours needed as set forth in the RFP for each location for the base period and the 4 option years. In addition, the RFP provided that offerors were to submit a separate breakdown of the prices by cost elements such as direct labor, overhead, general and administrative and profit.

Fifteen offerors responded to the solicitation by the June 22 due date for proposals. Technical evaluations were conducted and Trauma's proposal was considered to be acceptable and determined to be within the competitive range. On August 21, Trauma and the other competitive range offerors were sent discussion letters raising a number of technical and price concerns. Among other things, the agency asked Trauma to explain its high general and administrative (G&A) rates in the early stages of the contract as compared to the relatively low rates for the later option years.

The revised proposals were reviewed by the technical evaluation team and on September 5 a request for best and final offers (BAFO) was sent to all offerors, including Trauma,

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2/ In accordance with the evaluation plan, the evaluators did not score the proposals but rated them under Factors 1 and 2 as "Technically Acceptable," "Susceptible to being made Technically Acceptable" or "Technically Unacceptable."

remaining under consideration for award. The initial BAFOs included a Region I offer from Trauma with a total evaluated price, including the option periods, of $7,738,040, and one from Coastal at $10,599,760. After reviewing the BAFOs, the evaluators found that they had not informed some of the offerors, including Trauma, of all the deficiencies in their offers, and therefore discussions were reopened. In the September 28 discussion letter to the protester, the agency expressed its concern regarding the protester's compensation rates for physicians which decreased through the option years by stating: "It is also unrealistic to expect that the hourly compensation rate could decrease without having an impact on your ability to recruit and retain physicians. Request that you review your offer and provide rationale for your proposal." The letter also expressed concern with Trauma's high initial G&A rates.

After the responses were evaluated and certain changes made to the agency's requirements, the agency solicited a second round of BAFOs on October 23. In the letter requesting a second BAFO from Trauma, the agency again expressed its concern regarding the firm's plan to cut physicians' pay during the option years. Coastal submitted an offer priced at $7,871,960, while Trauma did not change its price.

Subsequently, the agency again amended its requirements and based on those changed needs sent the offerors a third request for BAFOs dated December 12. In response, Trauma submitted an offer with a total price of $7,077,520, the lowest BAFO received, while Coastal submitted the next lowest offer of the nine received at $7,207,560. Both offers were considered acceptable under the two technical evaluation factors.

While the evaluators concluded that Trauma's explanation that its high G&A rates for the initial period were justified by the costs needed to start up the services, they remained unconvinced that Trauma would be able to recruit and retain physicians while cutting their pay rate during the option years. Because of this, the agency rejected Trauma's offer as unrealistic and made award for Region I to Coastal as the low acceptable offeror with realistic pricing.

Trauma argues that its offer was improperly evaluated and that it was not either materially unbalanced or unrealistic. Specifically, the protester contends that the contracting officer failed to adequately "understand" Trauma's proposal and compensation plan. Finally, in its comments, Trauma maintains that the agency failed to evaluate Trauma's compensation scheme, that declines over the base year and 4 option years, as a deferred compensation plan.

While the term "materially unbalanced" was mentioned by the agency during discussions, the evaluation record shows that Trauma's proposal was not rejected because the agency concluded that it was unbalanced but primarily because the agency was concerned that the protester's declining wage structure represented a significant risk of performance problems. The agency evaluators did express some reservation about the "front-loading" of the G&A rates toward the initial performance period and its impact on the agency's future decision as to whether the options should be exercised, but it is clear that the rejection was the result of the agency's reaction to the proposed compensation plan. We therefore need not address the protester's arguments concerning unbalancing.

While "cost realism" ordinarily is not considered in the evaluation regarding the award of a fixed-price contract, agencies may, nonetheless, in their discretion, provide for a realism analysis in the solicitation of fixed-price proposals. The risk of poor performance when a contractor is forced to provide services at little or no profit or with an undercompensated workforce is a legitimate concern in the evaluation of proposals. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441. We will review the price evaluation conducted to determine that it was reasonable and consistent with the RFP evaluation criteria. Id.

Here, we find that the agency's judgment that Trauma's declining physician compensation rates posed an unacceptable risk of poor performance was reasonable.

In response to the agency's September 28 inquiry concerning Trauma's declining compensation rates for physicians, the firm stated that, "[w]e cannot divulge more specific information due to its proprietary nature, however, we know that the physicians we work with expect and respond to our long-term contracts." Later, in responding to the contracting officer's request for a second BAFO, Trauma stated that the physicians additional income paid in the first year of the contract may be invested "individually, or in the aggregate" and that the interest that this money earns provides further aggregate payments not reflected in the wage structure. Trauma also stated that physicians "like" the stability of long-term contracts and that "physicians will do what they are contracted to do" or face "legal consequences."

The record shows that Trauma's physician compensation rates are significantly lower than those proposed by the awardee and the overall government estimate. As far as Trauma's rather sketchy plan which apparently envisions its physicians' voluntarily investing their relatively high salary for the initial period to make up the later shortfall, the agency notes that this "voluntary" program cannot be evaluated because the amounts involved are unknown. Based on the above and the lack of a coherent explanation from Trauma of its rather unique compensation plan, we think that the agency's concerns that the Trauma proposal represented a significant risk of poor performance were justified.3/ Since the agency did not find that the low price offered by Trauma was realistic, it was proper under the RFP evaluation scheme which provided that realism of the price would be evaluated and that award would be made to the acceptable offeror proposing the lowest "realistic" price, for the award to be made to the next low offeror whose price was considered realistic.

Finally, Trauma argues for the first time in its comments on the agency report that its compensation scheme is a "deferred compensation plan" and that the agency erred when it did not "adequately and properly evaluate" the plan as such under Federal Acquisition Regulation § 30.415-1401(a), the cost accounting standard applicable to such plans. We fail to see the legal relationship between the Cost Accounting Standard which provides the criteria for accounting for such plans and the agency's evaluation judgment as to whether the particular compensation plan proposed by Trauma poses a significant performance risk. Moreover, the protester does not explain how its decreasing wage scheme constituted a deferred compensation plan.

The protest is denied.

Robert P. Murphy

for James F. Hinchman
General Counsel

3/ While the protester points out that its physician compensation rates for the final option year exceed the government estimates in two locations and is close to the estimate in another, we do not believe that this undermines the agency's conclusion. First, the record shows that the protester's rates are significantly lower in the other seven locations. Second, the basis of the agency's concern over Trauma's compensation plan was the impact of the yearly decrease in compensation which is present in Trauma's compensation plan in all 10 of the locations.