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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: National Medical Staffing, Inc.

File: B-242585.3

Date: July 1, 1991

Dr. Gloria M. Bertacchi for the protester.
Douglas P. Larsen, Jr., Esq., Department of the Navy, for the agency.
Robert Spiegel, Esq., Robert Arsenoff, Esq., and John Broanan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

While the agency's acceptance of the substitution of one dental hygienist for another after best and final offers constituted discussions, protester, who was not given a similar opportunity for discussions, was not prejudiced since the substitute did not impact upon the relative standing of offerors and there was no effect on price.

DECISION

National Medical Staffing, Inc. protests the award of a contract to Dental Power Services, Inc. under request for proposals (RFP) No. N00406-90-R-1116, issued by the Navy for dental hygienist services at two locations. National Medical argues that Dental Power was improperly allowed to substitute a hygienist after best and final offers (BAFO) were submitted.

We deny the protest.

The solicitation provided that award would be made to the low technically acceptable offeror and set forth a list of qualifications that an acceptable hygienist must possess. The RFP further stated that offerors must submit proof of these qualifications with their technical proposals and also provided in its work statement that, subsequent to award but 30 days prior to the performance of the services, the contractor must submit the hygienist's credentials to the commanding officer. The hygienist may not provide services until clinical privileges are granted by the commanding officer.

Three initial offers were received including one from National Medical and one from Dental Power. After discussions and a request for BAFOs, Dental Power, at a total price of \$259,968 for both locations, and National Medical, at \$346,862, submitted acceptable offers. Dental Power was selected for award as the low acceptable offeror and, on December 17, 1990, a notice of intent to award to that firm was sent to the other offerors. Subsequent to the issuance of the December 17 notice, but prior to the February 1, 1991, award to Dental Power, that firm offered the credentials of a hygienist not submitted in its BAFO. Since the hygienist met the RFP requirements--in fact the hygienist had been offered by National Medical--and since there was no price change as a result of the substitution, the agency accepted the substitute and made award to Dental Power.

National Medical objects to the substitution, arguing that it constituted improper discussions with only one of the offerors within the competitive range and invalidates the evaluation which was based upon a hygienist that Dental Power never intended to employ. While for the reasons stated below we agree with the protester that the substitution here constituted unilateral discussions, we do not find that this prejudi National Medical.

Discussions occur when an offeror is given the opportunity to revise or modify its proposal or when information provided is necessary for determining the acceptability of its proposal. Federal Acquisition Regulation § 15.601; Motorola, Inc., B-225822, June 17, 1987, 87-1 CPD ¶ 607. The conduct of discussions with one offeror generally requires that discussions be conducted with all offerors whose offers are within the competitive range and that the offerors have the opportunity to submit revised offers. Id. Since the RFP required that hygienists meeting certain specified standards were necessary in order for a proposal to be acceptable, the substitution of a hygienist and the agency's acceptance of the substitution clearly impacted upon the acceptability of the proposal and constituted discussions. See University of S. Carolina, B-240208, Sept. 21, 1990, 90-2 CPD ¶ 249. As indicated above, where discussions are conducted with one competitive range offeror, they must be conducted with all. Id.

Nevertheless, while the agency did not conduct discussions with National Medical, it is clear from the record that the protester did not suffer any competitive disadvantage as a result of this error. First, the substitute did not affect the relative standing of Dental Power in the evaluation since the proposals were merely classified as acceptable or unacceptable and the hygienist substituted had already been determined by the agency to have been acceptable during the

evaluation of National Medical's proposal. Also, Dental Power had already been determined acceptable based upon the credentials of the five hygienists it had submitted with its offer. Second, Dental Power did not change its price and National Medical does not argue that the substitution would have, in any way, caused it to alter its price, which was considerably higher than the awardee's.

National Medical also suggests that Dental Power's substitution of a hygienist in the protester's employ is itself inherently improper and further argues that the substitution constitutes an impermissible "bait and switch" which allegedly indicates that the awardee never really intended to perform as originally proposed. We disagree.

To the extent that National Medical objects to one of its employees being recruited by a competitor, its arguments are misplaced since there is nothing inherently unusual or improper with an offeror's hiring a competitor's personnel. A.B. Dick Co., B-233142, Jan. 31, 1989, 89-1 CPD ¶ 106. Further, and unlike the situation in Ultra Technology Corp., B-230309.6, Jan. 18, 1989, 89-1 CPD ¶ 42, upon which the protester relies, the record here does not demonstrate that a hygienist originally proposed refused the awardee permission to use his or her name; the record also does not reflect that Dental Power gained a competitive advantage in the comparative evaluation of offers by proposing a particular hygienist and then not informing the agency of an intended change. Cf. Omni Analysis, 68 Comp. Gen. 300 (1989), 89-1 CPD ¶ 239. In contrast, the record here discloses that Dental Power discharged its responsibility during the procurement process to notify the agency of changed personnel circumstances. Id. Thus, there is no basis to conclude that the awardee engaged in deceptive practices which impermissibly tainted the procurement as National Medical urges. See Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ ____.

The protest is denied.


for James F. Hinchman
General Counsel