



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** PharmChem Laboratories, Inc.

**File:** B-244385

**Date:** October 8, 1991

Del Stiltner Dameron, Esq., Raymond S.E. Pushkar, Esq., and Nathan A. Tash, Esq., McKenna & Cuneo, for the protester. Wendy T. Kirby, Esq., and Daniel C. Sweeney, Esq., Hogan & Hartson, for Damon Clinical Laboratories, an interested party.

Mina Mazaheri, Esq., Federal Bureau of Prisons, Department of Justice, for the agency.

M. Penny Ahearn, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, participated in the preparation of the decision.

### DIGEST

Protest is sustained where, despite solicitation evaluation scheme providing that technical merit was four times more important than cost, source selection decision was made to award to lower-scored technical, lower-cost proposal and record does not provide a reasonable basis to support the agency's determination that protester's apparently significant technical advantage was offset by relatively minor price advantage; award decision was inconsistent with evaluation scheme.

### DECISION

PharmChem Laboratories, Inc., the incumbent contractor, protests the award of a firm-fixed-price requirements contract to Damon Clinical Laboratories, for inmate drug testing services, under request for proposals (RFP) No. 100-460-0-C0, issued by the Federal Bureau of Prisons (BOP), Department of Justice (DOJ). PharmChem contends that the agency improperly made cost the predominant source selection factor, although it was secondary to technical considerations under the RFP, and made award to a slightly lower-priced offeror despite PharmChem's higher technical and overall score.

We sustain the protest.

## BACKGROUND

The RFP requested proposals for a contract with a base period and three 1-year option periods, to provide urinalysis drug testing services for federal prison inmates throughout the United States. The statement of work (SOW) established requirements concerning specimen collection, chain of custody, testing methodologies, and reporting of results. The solicitation generally provided for award on the basis of the offer most advantageous to the government, cost and other factors considered. Specifically, as amended, the solicitation stated that proposals would be evaluated on the basis of the following criteria: (1) prior experience, past performance, business reputation, volume and type of work currently performed, and capability in terms of methodology (35 of 100 available points); (2) implementation of plan of approach (25 points); (3) quality and type of service offered (20 points); and (4) price (20 points). The solicitation provided that the lowest overall proposed price for the base and option periods would receive the highest number of points under the price criterion.

Following the sixth amendment of the solicitation, which incorporated a completely rewritten SOW to make the testing methodology more stringent, a fourth (and final) round of best and final offers (BAFO) was requested; six firms responded to this BAFO request. In the ensuing technical evaluation, PharmChem received 72 of a possible 80 technical points, (90 percent), while Damon received 63 technical points (79 percent). (The technical scores of the remaining offerors ranged from 56 to 67 points.) Six of the evaluated nine-point technical superiority of PharmChem's offer was accounted for under the quality of service criterion, which included the following evaluated subfactors: type of service offered, internal chain of custody, and quality assurance program. Although the agency technical evaluator concluded that both PharmChem and Damon were capable of performing the requirements, his analysis indicated that PharmChem's proposal was superior under this criterion. For example, under type of service offered, the evaluator noted that PharmChem "far exceeds" the requirements of the contract; at the same time, he expressed concern that Damon "will be required to expand in order to accommodate this contract." With respect to price, Damon's low offered price of \$5,058,057 received the maximum 20 points and PharmChem's second-low offered price of \$5,140,624 (\$82,567, or 1.6 percent, higher than Damon's) received a score of 19.67. As a result, PharmChem received

the highest combined technical and price score of 91.67, while Damon received the third highest overall score of 83 points.<sup>1/</sup>

After reviewing the technical evaluation documentation, the source selection authority (SSA) determined that, notwithstanding the numerical scores, Damon should be awarded the contract based on its lower proposed cost. Subsequently, the BOP requested the required approval for award from the DOJ's Office of Procurement Executive (OPE), noting that "all proposals submitted were substantially technically equal" and that "the higher technical score awarded to PharmChem Laboratories reflects nothing more than the advantages of incumbency, rather than a true technical superiority." OPE, however, declined to approve the request on the basis that the contract file contained insufficient documentation; OPE stated that "given the relatively minor price difference and the greater technical difference, the contract file needs to be documented with the specific basis for considering the offers technically equal, and not just the general conclusion that the higher technical score is only the result of incumbency."

In his subsequent revised justification, the SSA determined that there was "no significant difference in the technical capability of the top three" offerors and that they were essentially technically equal in capability to perform the required work; he concluded that, despite the difference in the technical scores, there was "no [additional] beneficial value to the government" from the higher scored proposals. According to the SSA, PharmChem's superior score was attributable to the evaluation (under quality of services) of PharmChem's proposal of a computerized accountability system using bar-coded specimen container labels and its participation in external blind testing programs of the National Institute on Drug Abuse (NIDA) and College of American Pathology (CAP), which enhanced the firm's rating, but were not required by the RFP. The revised justification also included a statement, prepared by the SSA and signed by the technical evaluator, that a price premium for award to other than the "lowest priced bidder" was not justifiable. The SSA concluded that price properly became the deciding factor in the source selection decision because the higher scores received by PharmChem and the second-ranked offeror did not reflect technical superiority that warranted their additional cost. The OPE approved award on this basis, and upon learning of the resulting award to Damon, PharmChem filed this protest with our Office.

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<sup>1/</sup> A third offeror received the second highest total score of 86.04 points based on a technical score of 67 points and a cost score of 19.04 (with an offered cost of \$5,299,795).

PharmChem alleges that its superior proposal improperly was determined to be technically equal to the awardee's, and that the resulting award on the basis of cost therefore was flawed. For example, PharmChem notes that bar-coded specimen container labels, one of the factors that increased its score, and which the agency has cited as having no beneficial value, in fact was recognized elsewhere in the evaluation documentation as beneficial. PharmChem concludes that its higher technical score did in fact reflect a technical superiority sufficient to offset Damon's relatively small cost advantage, and to warrant award to PharmChem.

#### ANALYSIS

In a negotiated procurement, contracting officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. TRW, Inc., 68 Comp. Gen. 511 (1989), 89-1 CPD ¶ 584. However, they do not have the discretion to announce in the solicitation that they will use one evaluation plan, and then follow another; once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria in making its award decision or inform all offerors of any significant changes made in the evaluation scheme. Greenebaum and Rose Assocs., B-227807, Aug. 31, 1987, 87-2 CPD ¶ 212. Under this standard, it is improper to induce an offer representing the highest quality and then reject it in favor of a materially inferior offer on the basis of a relatively insignificant price difference. John Snow Public Health Group, Inc., 59 Comp. Gen. 498 (1980), 80-1 CPD ¶ 366; see also, Hattal & Assocs., B-243357, B-243357.2, July 25, 1991, 70 Comp. Gen. \_\_\_\_, 91-2 CPD ¶ 90.

Of course, agencies may make cost/technical tradeoffs in deciding between competing proposals; the propriety of such a tradeoff turns not on the difference in technical scores per se, but on whether the contracting agency's judgment concerning the significance of that difference was reasonable in light of the RFP evaluation scheme. TEK, J.V. Morrison-Knudsen/Harnischfeger, B-221320; B-221320.2, Apr. 15, 1986, 86-1 CPD ¶ 365; Lockheed Corp., B-199741.2, July 31, 1981, 81-2 CPD ¶ 71. However, where cost is secondary to technical considerations under an RFP evaluation scheme, as here, selection of a lower-priced proposal over a proposal with a high technical score requires an adequate justification, i.e., one showing the agency reasonably concluded that, notwithstanding the point differential between the two proposals, they were essentially equal. TRW, Inc., supra; DynCorp, B-232999, Feb. 14, 1989, 89-1 CPD ¶ 152, aff'd, B-232999.2, B-232999.3, July 14, 1989, 89-2 PCD ¶ 45.

Further, the Federal Acquisition Regulation (FAR) requires agencies to document their selection decisions so as to show the relative differences between proposals, their weaknesses and risks, and the basis and reasons for the selection decision. FAR § 15.612(d)(2). Accordingly, we are obligated to object to a cost/technical tradeoff where a reasonable basis is not evident from the record. Avanco Int'l, Inc., B-241007.2, Mar. 13, 1991, 91-1 CPD ¶ 276.

We find that the SSA's conclusion that the two proposals were essentially equal, notwithstanding PharmChem's higher technical score, was inconsistent with the RFP's evaluation scheme, which indicated that the agency was seeking technical superiority, even if it would result in a higher price. The record shows that the evaluator determined that PharmChem's proposal, rated in terms of the evaluation criteria in the RFP, was superior to Damon's, and the agency has not shown that this superiority was illusory or so insignificant that it could be offset by Damon's relatively minor price advantage. In view of the emphasis placed by the solicitation on technical superiority, award on this basis was improper.

As indicated above, PharmChem's perceived superiority under quality of services accounted for six points of its nine-point technical superiority. The agency evaluator, in awarding PharmChem full points for its proposed internal chain of custody, one of the subfactors under the criterion, explained that PharmChem's system was "totally computerized [and] automated" and would withstand legal challenge. The evaluator's focus on this aspect of PharmChem's system was consistent with the evaluation worksheet, which instructed the evaluator to consider proposed methods of identifying samples as well as record keeping. In explaining why two other offerors received lesser scores in this area, the agency evaluator noted their lack of bar coding, and in one case commented that its absence would cause "delay in processing and possible control problems." In evaluating Damon's proposal in this area, the evaluator commented that while "everything else [was] fine," Damon had failed to offer "bar-coded labels." In other words, in judging the quality of the proposals under this criterion and subfactor, the evaluator determined that the bar coding offered by PharmChem made that firm's proposal superior to Damon's. The SSA, in his determination to make award to Damon, did not explain why he did not consider this advantage offered by PharmChem to represent a material benefit to the agency, and it is not otherwise apparent why he accorded the benefit perceived by the evaluator no weight.

The SSA also cited PharmChem's proposal of NIDA and CAP external blind performance testing as a partial explanation of its higher score. Damon's proposal, however, also indicated

that its laboratories were certified by NIDA and CAP. Thus, Damon's laboratories were subject to the same NIDA and CAP external blind testing requirements as were PharmChem's, see 56 Fed. Reg. 30,588 (1991); 53 Fed Reg. 11,970, 11,985, 11,988 (1988), and PharmChem's point advantage in this area cannot be attributed to external blind testing. Instead, it is apparent from the evaluation narrative for PharmChem's proposal, which stated that the firm's quality control is "excellent" with "daily internal blind testing done," that PharmChem's point advantage under the evaluation criterion for quality of services also was partly attributable to its offer of internal blind testing. In this regard, the evaluation worksheet specifically instructed the evaluator to consider proposed internal blind testing. While PharmChem described its quality assurance program in detail, Damon's proposal only generally stated that the firm had an internal quality assurance program, and it did not specifically offer internal blind testing. Again, the agency has not explained why the protester's noted superiority in the area of quality assurance, which was encompassed by and evaluated under the stated criteria, does not represent a real technical advantage. Further, in addition to the noted advantages of PharmChem's proposal under this criterion, the evaluator expressed concern that Damon's proposed "lab will be required to expand in order to accommodate this contract." There is no indication in the record that the agency ever resolved its concern with Damon's proposal in this area.

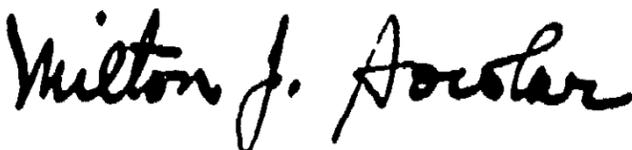
The remaining three points of PharmChem's nine-point technical advantage were attributable to other considerations. For example, PharmChem's proposal was scored superior to Damon's (the maximum five points versus four points) under the evaluated subfactor for business reputation. The evaluator reported that "PharmChem is highly recommended by all clients [and] has routinely performed in the top 1 percent of all labs for national proficiency testing." In contrast, the evaluator merely noted that Damon had previously furnished "adequate services, appropriate attention [and] responsiveness."

In sum, the record does not support a finding that the competing proposals were essentially equal under the stated evaluation criteria. As discussed, the evaluation scheme here, which assigned technical factors four times greater weight than cost, invited offerors to propose the use of methods and resources they believed would best accomplish the desired services, not necessarily at the lowest cost. It appears from the record that this is exactly what PharmChem did, and PharmChem's proposal in fact was found by the evaluator to be superior in the areas discussed based on his application of the evaluation factors in the RFP. While, as indicated above, an agency certainly may make a cost/technical tradeoff under which cost savings are determined to offset

technical advantages, it can only do so in a manner consistent with the evaluation scheme. By discounting the evaluator's conclusions in favor of Damon's relatively small price advantage without a cogent explanation as to why the apparent technical advantages of PharmChem's proposal were not significant, the agency essentially gave price more weight than specified in the RFP and therefore departed from the stated evaluation criteria. We therefore sustain the protest on the basis that the award decision was inconsistent with the stated evaluation scheme. See John Snow Public Health Group, Inc., supra.

We find that, based on the technical superiority of its proposal, PharmChem was entitled to award under the evaluation scheme set forth in the solicitation. Accordingly, by letter of today we are recommending that the agency terminate its contract with Damon for the convenience of the government and make award to PharmChem, if found responsible. Further, we find that PharmChem is entitled to reimbursement of its reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1991).

The protest is sustained.

*for*   
Comptroller General  
of the United States