



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mirada Associates

File: B-245974

Date: January 30, 1992

Estelle Cooke-Sampson, M.D., for Mirada Associates, the protester.

David R. Hazelton, Esq., Latham & Watkins, for Isis S. Hannallah, M.D., an interested party.

Daria Rusyn, Esq., Department of the Army, for the agency. Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where there are potential benefits from both approaches to performing the contract, agency reasonably determined that protester's proposal to provide diagnostic services through the use of three part-time radiologists and awardee's proposal to provide such services through the use of one full-time radiologist were equally desirable, making awardee's low cost the proper basis for award.

2. Agency properly disregarded cost savings protester alleges could be realized from its proposal for radiology services, where solicitation did not provide for consideration of such cost savings in the evaluation of proposals, and where, in any event, alleged savings are not sufficient to make protester the low offeror in line for award.

DECISION

Mirada Associates protests the award of a contract to Isis S. Hannallah, M.D., under request for proposals (RFP) No. DAHC35-91-R-0010, issued by the Department of the Army for diagnostic radiology services at DeWitt Army Community Hospital, Fort Belvoir, Virginia. Mirada contends that the Army improperly failed to evaluate its proposal in accord with the solicitation's stated evaluation criteria.

We deny the protest.

The RFP called for the provision of 2,000 hours of diagnostic radiology services, at a fixed-price per hour, for a 1-year base period, with options for three additional 1-year periods. The solicitation required the submission of cost and technical proposals, and provided for award on the basis of the proposal found to be technically superior. In the event, however, that two or more competing proposals were assessed as substantially equal, price would be the basis for award. The solicitation indicated that the most important evaluation criterion would be "technical considerations," consisting of the experience of the diagnostic radiologist and understanding of the requirement. The remaining criteria, "business management" and "cost," were less important.

The Army received proposals from seven offerors, and found the two top-rated proposals, those of Mirada and Hannallah, to be essentially equal technically. Both proposals received scores of 98 out of a possible 100. In accordance with the RFP provision that in the case of substantially equal technical proposals award would be based on price; the agency made award to Hannallah on the basis of its lower price--\$760,000, compared to Mirada's price of \$1,053,500, the second highest among all proposals submitted. Mirada's protest followed.

TECHNICAL EVALUATION

Mirada asserts that its proposal is technically superior to the awardee's (the incumbent under the prior contract for the same services) on the basis of its proposed technical approach. Mirada's approach involves the use of three part-time radiologists, rather than one full-time radiologist as proposed by Hannallah. Mirada asserts that three radiologists can provide better coverage than one, and that its score should have reflected this fact. In addition, the protester contends that its technical score should have been higher than Hannallah's on the basis of the superior qualifications of its radiologists.

In reviewing protests against the propriety of an agency evaluation of proposals, we will not independently evaluate the proposals, ACM Envtl. Servs., Inc., B-242064, Mar. 7, 1991, 91-1 CPD ¶ 255; rather, as the determination of the relative desirability and technical adequacy of the proposals is primarily a matter of agency discretion, we will review an evaluation only to determine whether it was reasonable and consistent with the evaluation criteria in the RFP. Pemco Aeroplex Inc., B-239672.5, Apr. 12, 1991, 91-1 CPD ¶ 367. The mere fact that a protester disagrees with the agency does not render an evaluation unreasonable. Id.

We find that the Army's evaluation in this case was reasonable. The protester's assertion notwithstanding, there is no basis in the record for concluding that the agency could not reasonably find the two alternate approaches to meeting the requirement equally desirable. Whether or not the protester is correct that its three part-time radiologists would provide superior coverage--in fact, the agency found Hannallah had demonstrated the ability to provide the required coverage with a single physician during its performance as the incumbent--the record shows there also are potential off-setting advantages from having the services performed by a single individual. For example, 1 doctor who is present in the hospital 8 hours a day, every day, may well have a better understanding of the hospital's operating procedures and personnel than 3 different doctors, each rotating through the clinic an average of 1 out of 3 days and working elsewhere the remaining two-thirds of their time. Similarly, the use of one physician reasonably could be viewed as offering greater continuity of service, as compared to a part-time radiologist having to complete work that was begun by another part-time individual. There also is no evidence of superior qualifications. Mirada asserts that its own radiologists are more qualified than Hannallah's due to their board certification, but the record shows that the radiologist proposed by Hannallah also is board certified.

Although Mirada disagrees with the agency's assessment that the two approaches were technically equal, so that proposed cost became the determining factor for award, the protester has not shown that it was unreasonable. Pemco Aeroplex Inc., supra.

COST SAVINGS

Mirada asserts that, because its radiologists are better qualified, they would be able to perform a greater number of diagnostic procedures internally, within the hospital, rather than having to refer patients to outside radiologists. This greater in-house capability, according to the protester, would result in a \$210,000 cost saving to the government, since there would be fewer payments to outside providers under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

Mirada bases this argument in part on a statement in the RFP that the Army hopes "to offer more comprehensive services and provide more cost-effective care for those beneficiaries currently being served in the private sector under CHAMPUS." According to Mirada, this statement required offerors to address the matter of CHAMPUS-related costs in their proposals, and required the Army to consider such costs in the evaluation of proposals. Mirada asserts that its pro-

posal addressed the issue of CHAMPUS-related cost savings in considerable detail. The protester points, for example, to the statement in its cost proposal that "our proposal offers the government enhanced cost saving opportunities relative to actual historical expenditures," and to projections of cost savings which were included in its proposal and which were based on historical CHAMPUS-related data. According to Mirada, the Army improperly failed to take into account these cost savings from CHAMPUS avoidance, which Mirada estimates to be \$210,000 over the life of the contract (base and option periods).

The agency responds that its reference to CHAMPUS in the solicitation was for background purposes only and was never intended to indicate that any cost savings under CHAMPUS would be a factor in evaluating proposals. The Army also challenges Mirada's estimate as totally speculative. In the agency's view there is no meaningful way of estimating how the number of outside referrals would vary from one radiologist to another, how many referrals there would be, and what the cost of such referrals would be.

We find no merit in Mirada's argument. We agree with the Army that the reference to CHAMPUS that is cited by Mirada is merely background information and does not constitute a basis for evaluating cost proposals. The statement appears in the following context:

C.1.2. Background Information. . . . This is a . . . contract . . . which provides health care to authorized beneficiaries of the Army's direct care system. The system comprised Army owned, staffed, and operated hospitals and clinics throughout the United States. Contracting has been chosen as a strategy to permit expansion of the health care capability of our facilities by overcoming shortfalls in the numbers of uniformed practitioners/providers. Concurrently, we hope to offer more comprehensive services and provide more cost-effective care for those beneficiaries currently being served in the private sector under CHAMPUS.

Taken as a whole, it is clear that this paragraph merely describes the type of services being solicited and explains why, in view of the fact that the services are to be provided in facilities that are "Army owned, staffed, and operated," the services are being solicited from private-sector contractors--i.e., why "contracting has been chosen"--as opposed to other possible alternatives, such as the use of uniformed personnel. We find nothing in this language that reasonably would suggest that the agency's "hope to . . . provide more cost-effective care" is an expression

of a formal solicitation requirement. See generally Ionics, Inc., B-211180, Mar. 13, 1984, 84-1 CPD ¶ 290 (description in solicitation of agency goals, and reference to certain technical approaches "merely to provide background information," held not to constitute statement of solicitation requirements or of criteria under which proposals were to be evaluated).

In contrast, the provisions of the RFP that specifically set forth the criteria to be used in evaluating proposals did not mention CHAMPUS at all. These provisions simply stated that price proposals would be evaluated by "adding the total price for all options to the total price for the basic requirement"--that is, that the evaluation would be based only on the actual proposed prices. Evaluation and award are required to be made in accordance with the terms of the solicitation, not on the basis of unstated evaluation criteria. Environmental Technologies Group, Inc., B-235623, Aug. 31, 1989, 89-2 CPD ¶ 202; Western Publishing Co., Inc., B-224376, Sept. 2, 1986, 86-2 CPD ¶ 249. In this case, the evaluation criteria do not address the matter of in-house diagnoses versus outside referrals. Since the reference to CHAMPUS obviously--as the paragraph heading indicates--was included in the solicitation for background purposes only, and is not part of the stated basis for award, this information does not set forth a requirement of the RFP or an evaluation criterion under which the agency was required to evaluate Mirada's proposal. Environmental Technologies Group, Inc., supra; Ionics Inc., supra.

We also agree with the agency that the estimated cost savings described by Mirada are speculative. We find, moreover, that the estimates rest on assumptions that are not supported by the record. One of the premises for Mirada's claimed cost savings, for example, is that the protester's radiologists are so far superior to Hannallah's that they will be able to handle more diagnoses in house. As explained above, however, the Army did not find this to be the case in its technical evaluation of proposals, which evaluation we have found was reasonable. We therefore find nothing in the record to substantiate Mirada's claim.¹

¹We have expressed reluctance in the past to sanction reliance on price adjustments based on claimed cost savings where the actual savings cannot be determined with some degree of certainty. See generally Lockheed Propulsion Co.; Thiokol Corp., 53 Comp. Gen. 977 (1974), 74-1 CPD ¶ 339 (claimed cost savings related to transportation questionable, where RFP did not ask for plan to minimize such costs and even attempting to estimate actual savings was extremely speculative).

In any event, based on Mirada's own projections, the alleged cost savings would not make Mirada the low offeror in line for award even if the agency were required to consider the savings. Specifically, reducing Mirada's proposed price by the amount of its estimated cost savings, \$210,000, results in an adjusted proposed price of \$843,500 for Mirada versus Hannallah's price of \$760,000. Consequently, Mirada has not shown how it was prejudiced by the agency's failure to take into account the alleged cost savings. See Environmental Technologies Group, Inc., supra.

The protest is denied.


for James F. Hinchman
General Counsel