

L. Glass
1/25/93



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Coastal Government Services, Inc.

File: B-250820

Date: February 23, 1993

Kenneth A. Martin, Esq., and Andrew B. Katz, Esq., Elliott, Vanaskie & Riley, for the protester.
Donald E. Barnhill, Esq., East & Barnhill, for Med-National, Inc., an interested party.
John A. Dodds, Esq., Department of the Air Force, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposal and exclusion of proposal from consideration under modified two-step procurement is sustained where record does not clearly show that the agency's decision to restrict the competition to one firm was reasonable, since questions concerning the acceptability of protester's proposal could have been resolved through relatively limited discussions.

DECISION

Coastal Government Services, Inc. protests the award of a contract to Med-National, Inc. under request for proposals (RFP) No. F34650-92-R-0131, a modified two-step procurement,¹ issued by the Department of the Air Force for the acquisition of obstetrical and gynecological (OB/GYN)

¹Under a modified two-step procurement, offerors submit technical proposals and price proposals simultaneously. Technical proposals are evaluated to determine technical acceptability. Discussions are held with offerors whose proposals are susceptible of being made technically acceptable. See Federal Acquisition Regulations (FAR) § 15.609(d) which permits solicitation of unpriced technical proposals. Only the price proposals of acceptable firms are opened and evaluated. Award is made to the low responsible offeror.

services at the United States Air Force Hospital, Tinker Air Force Base, Oklahoma. Coastal argues that its proposal was improperly found technically unacceptable and excluded from the competitive range.

We sustain the protest.

The RFP was issued as a modified two-step procurement on July 14, 1992, with a closing date for receipt of initial proposals of August 14, 1992. The RFP contemplated the award of a fixed-price contract for a base period of 1 year with four 1-year options. Offerors are to provide physicians and/or medical staff and administrative support to perform outpatient and inpatient OB/GYN health care to government beneficiaries in government-supplied facilities. The RFP advised offerors that separate technical and cost proposals should be submitted simultaneously, and that cost proposals would only be considered once the agency had determined that an offeror's technical proposal was acceptable. The RFP also stated that a technical evaluation team would evaluate proposals on the basis of the following elements: comprehension of requirement, general management, and quality assurance/risk management. The RFP stated that the decision to conduct discussions was discretionary with the agency and offerors were cautioned to submit proposals that would be acceptable without additional explanation or information, since a final determination regarding a proposal's acceptability might be made solely on the basis of the proposal as submitted without discussions.² The RFP further provided that award would be made on the basis of the lowest priced technically acceptable proposal.

The Air Force received two timely proposals from Coastal and Med-National. After evaluation, Coastal's proposal was determined to be technically unacceptable and was excluded from further consideration. By letter dated August 26, the agency advised Coastal that its proposal was determined to be unacceptable for its failure to address several technical areas. Coastal was advised that revisions to its proposals would not be considered.

On August 31, Coastal filed an agency-level protest arguing that the evaluation of its proposal was incorrect because each area cited as not being addressed was in fact specifically addressed in its proposal, and that its

²The cover letter to the RFP signed by the contracting officer explains that under the modified two-step evaluation, "those offerors which are acceptable and those which are susceptible of being made acceptable, will remain in the competition and will be included in discussions with regard to their technical proposal."

proposal was significantly lower priced than the awardee's proposal. After receipt of Coastal's protest, the agency re-evaluated Coastal's proposal and determined that the proposal did address three of the areas. The agency gave Coastal appropriate credit for each of these tasks but still found the proposal unacceptable because of the following: (1) inadequate number of providers and specific administrative support for the clinic, (2) lack of in-service training procedures, and (3) failure to name and identify the qualifications of the proposed Service Chief.

On September 18, award was made to Med-National at a price of \$8,983,049. Coastal's price was \$6,002,147. This protest followed on October 8. Med-National was advised of the protest. The contracting officer has determined to continue contract performance because of urgent and compelling reasons. FAR § 33.104(c)(2)(i) (FAC 90-6).

Coastal protests the rejection of its proposal as technically unacceptable because it was based on alleged deficiencies with Coastal's proposal that were either (1) not deficiencies; or (2) very minor informational deficiencies which Coastal was capable of correcting through discussions. Moreover, Coastal contends that ambiguities in the solicitation contributed to any perceived technical deficiencies with its proposal.

The agency basically justifies its award to Med-National because Coastal, the only other offeror, submitted an unacceptable proposal. Under two-step procedures, proposals must be evaluated for technical acceptability. FAR § 15.609(d). Discussions must be held with offerors whose proposals are susceptible of being made acceptable since award is to be made to the low responsible firm. Determinations by contracting agencies that leave only one proposal under consideration for award are closely scrutinized by our Office. See Corporate Strategies, Inc., B-239219, Aug. 3, 1990, 90-2 CPD ¶ 99. Where only one proposal remains, discussions are in order if, for example, there is a close question of acceptability, if the inadequacies of the solicitation contributed to the technical deficiency of the proposal, or if an informational deficiency could be reasonably corrected by relatively limited discussions. See Corporate Strategies, Inc., supra.; NITCO, B-246185, Feb. 21, 1992, 92-1 CPD ¶ 212. Here, we think the above factors dictate further consideration of Coastal's proposal.

As discussed below, inadequacies in the protester's proposal were basically minor informational deficiencies which were relatively easy to resolve through discussions. In view of the existence of only one other, much more expensive

competitor, the Air Force was obligated to discuss the shortcoming of Coastal's proposal with the firm.

INADEQUATE NUMBER OF PROVIDERS AND SPECIFIC ADMINISTRATIVE SUPPORT FOR THE CLINIC

The RFP technical proposal instructions asked offerors to submit a plan which would satisfactorily ensure OB/GYN coverage as required by the statement of work (SOW). Coastal, which is currently operating several OB/GYN clinics at military facilities, proposed more than adequate staffing or coverage. However, according to the contracting officer, Coastal did not provide a detailed schedule in its plan for operating the clinic on a day-to-day basis with its proposed personnel.

Med-National's proposed plan for operating the clinic does, in a few sentences, describe its staff assignment and rotation plan. Essentially the same information is contained in Coastal's proposal, but it is scattered under the firm's discussion of the various contract tasks. Coastal listed the personnel who would perform the work and committed to meet the agency's minimum scheduling requirements. Based on the anticipated workload for the Tinker Hospital, Coastal stated that its proposal of four physicians and a nurse practitioner would enable it to meet the requirements to provide two physicians for surgery, a nurse practitioner to complement staffing requirements in the clinic, and sufficient physicians to satisfy the on-call requirements. Coastal's proposal contained procedures that provided for the use of back-up physicians and extenders in the case of scheduled and unscheduled absences. Coastal offered to provide routine inpatient/outpatient and emergency services as required by the solicitation. Coastal also provided a plan (one and one-half pages in length) which generally described how Coastal would operate the clinic.

The agency is correct that Coastal's operating plan summary does not contain its staff assignment schedule. This information could have easily been provided in response to a discussion question.

As to Coastal's failure to provide specific administrative support, the SOW required the contractor to supply sufficient administrative personnel to adequately support the contract medical personnel in the clinic, including reception, appointment scheduling and outpatient transcription. The SOW did not describe specific skills for these positions. The technical proposal instructions required offerors to provide resumes of all proposed personnel to include administrative staff or in the event that the offeror did not currently have these personnel on

its staff, to provide a plan for recruitment and the minimum requirements for each position. The evaluators found Coastal's proposal deficient because it failed to furnish a recruitment plan showing the minimum requirements for its two administrative positions.

Coastal stated in its proposal that it would provide a receptionist and administrative assistant, and provided a plan for recruitment, including its strategy for identifying qualified candidates for non-physician staffing based on referrals, local advertising, and telephone contacts. Coastal did submit minimum qualification requirements for OB/GYN physicians and nurse practitioners, but it did not submit its minimum requirements for the receptionist and transcriber.

While the solicitation did require proposed administrative staff to include a receptionist/scheduling clerk and transcriptionist, it did not require any specific skills for these positions. Coastal proposed a staff which included a receptionist and an administrative assistant whose duties, while not explained by Coastal, were adequate to meet the SOW requirements. The awardee's proposal included only a paragraph describing generally the skills necessary for the two positions, without an extensive discussion of the minimum requirements for the jobs. In our view, Coastal's failure to state its minimum requirements for recruiting purposes is an informational deficiency that could have been easily corrected through discussions.

LACK OF IN-SERVICE TRAINING PROCEDURES

The SOW required that the contract physician teach one in-service training class per quarter and submit a report about the class. The technical proposal instructions stated that the contractor is responsible for continuing medical education for its own personnel as well as providing in-service training to medical treatment facility support personnel. The RFP requested the contractor to submit a plan which ensures compliance with in-service training requirements.

Coastal stated in its proposal that once per quarter one of its providers would serve as an advisor and teacher for one in-service training class and that the subject matter, date, and time of the class would be decided by Tinker Hospital. The evaluators concluded that while Coastal's proposal adequately addressed the continuing medical education requirements, it failed to meet the SOW requirement that a physician serve as the advisor and teacher because the proposal indicated that a provider, rather than a physician, would perform the training.

As required by the solicitation, Coastal proposed five providers, four physicians, and one nurse practitioner. The RFP defined providers to include physicians and physician assistants. The agency is correct that it is possible to read the proposal to allow Coastal to use the nurse practitioner instead of one of its four proposed physicians to conduct in-service training. While the Coastal proposal was ambiguous on this point, this ambiguity could have been easily addressed during discussions.

FAILURE TO NAME AND IDENTIFY THE QUALIFICATIONS OF THE PROPOSED SERVICE CHIEF

With respect to the proposed service chief, the SOW required the offeror to appoint a chief of OB/GYN services and to submit a complete resume outlining the specific experience of the proposed chief, listing past supervisory and provider roles. The resume was to include the name, educational background, present experience, present position or title, including the supervisor, facility, and address, the types of supervisory experience, and specific experience as chief of service. The solicitation also contained a list of responsibilities of the chief of service.

Coastal did not provide a name or resume of the proposed service chief; instead, Coastal stated that it would designate one of its proposed contract physicians as the service chief to carry out the SOW supervisory responsibilities. Coastal submitted a "sample" resume for a proposed service chief who was one of the four physicians it proposed. The agency evaluated the sample resume and determined that it did not meet the minimum needs of the government because it provided no evidence of long-term supervisory experience and no evidence of quality assurance/risk management. The agency concluded that Coastal's failure to name a service chief was a material deficiency.

While stating the responsibilities of the service chief and requiring some type of supervisory experience, the RFP did not list any specific qualifications for the service chief nor did it require any specific length of time for supervisory experience. The sample resume provided by Coastal did show that physician's experience as a medical director for several medical facilities including an OB/GYN facility at an Air Force hospital and shows a minimum of 3 years experience as a medical facility director. On the other hand, the awardee stated that its proposed service chief had 2 years of supervisory experience. Here, the protester's proposal was found deficient because the resume showed a lack of long-term supervisory and quality assurance management experience. However, the RFP contained no specific experience requirement for the service chief and

long-term supervisory and quality assurance experience was not addressed in the resume of the awardee's proposed service chief. We believe the designation of a medical director and the required experience level also could have been resolved easily through discussions.

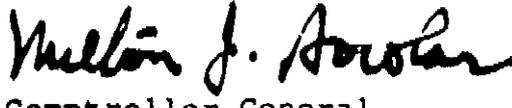
CONCLUSION

We believe the agency unreasonably determined that Coastal's proposal was technically unacceptable based on minor informational deficiencies and proposal ambiguities. We note that Coastal's proposal offered significant cost advantages and the minor additions to the proposal that were necessary do not involve any major costs since Coastal's initial proposal contains adequate staffing.

We sustain the protest.

We have concluded that the protester's proposal was improperly excluded from consideration. Ordinarily, we would recommend that discussions be held. See FAR § 15.609(d). However, because contract performance continued in the face of Coastal's protest due to urgent and compelling circumstances, it is not practicable to recommend that the Air Force re-open negotiations. We do recommend, however, that the Air Force not exercise the options under Med-National's contract, and instead re-compete for its needs beyond the base year. Prior to re-competing the RFP the Air Force should review the RFP and determine whether it should be amended to better state its requirements. We also find that Coastal is entitled to the costs of filing and pursuing this protest, including attorneys' fees and its proposal preparation costs. 4 C.F.R. § 21.6(d)(1) and (2) (1992). Coastal should submit its certified claim for such costs directly to the agency within 60 days.

The protest is sustained.

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