



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dylantic, Inc.

File: B-261886

Date: October 30, 1995

Howard W. Roth III, Esq., Vandeventer, Black, Meredith & Martin, L.L.P., for the protester.

John R. Osing, Jr., Esq., Department of the Navy, for the agency.

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DIGEST

Protest against rejection of proposal as technically unacceptable and subsequent award on the basis of initial proposals to next lower-priced offeror is denied where protester failed to comply with solicitation requirement for detailed information demonstrating compliance with qualifications requirements for pharmacy technicians; since the solicitation clearly advised offerors of the agency's intent to award without discussions, and there was a reasonable basis for concluding that awardee had submitted the low, technically acceptable offer, agency was not required to conduct discussions.

DECISION

Dylantic, Inc. protests the rejection of its proposal as technically unacceptable and the award of a contract to The Chesapeake Center, Inc. under request for proposals (RFP) No. N62645-95-R-0026, issued by the Naval Medical Logistics Command for pharmacy technician services for the three Branch Medical Clinics associated with the Naval Medical Center, Portsmouth, Virginia.

We deny the protest.

The RFP contemplated the award of a firm, fixed-price contract to the low-priced, technically acceptable offeror for a 1-year base period plus 4 option years for the full-time services of 21 pharmacy technicians. Offerors were to submit both technical and cost proposals. Regarding the technical proposal, the RFP set forth detailed requirements for information pertaining to the qualifications of the

proposed individuals to perform the required services.¹ Solicitation clause L.18, entitled "Instructions For Preparation of Proposals," provided in pertinent part that:

"(1) . . . [t]he technical proposal shall include the following documentation:

"(i) (A) Proof of graduation from a Pharmacy Technician program accredited by the American Society of Hospital Pharmacists (ASHP) or proof of completion of a formal (i.e. technical or hospital based program) pharmacy technician training program. **A copy of the certificate is required, or,**

"(i) (B) Proof of experience of at least 12 months within the preceding 36 months as a pharmacy technician.

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"(iii) Letters of recommendation from two practicing physicians, pharmacists, or pharmacy supervisors attesting to the health care worker's clinical skills. Reference letters must include name, title, phone number, date of reference, address and signature of the individual providing reference.

"(iv) Proof of current Basic Life Support, Level C (BLS-C) [Cardiopulmonary Resuscitation and Emergency Cardiac Care Provider training certification]. A copy of a current BLS-C card is required."

The above clause specifically cautioned offerors that "[a]ny proposal which does not offer at a minimum, that which is requested in this solicitation, may be determined to be substantially incomplete and not warrant any further consideration." In addition, the RFP stated the government's intention to evaluate proposals and award a contract without discussions, and specifically warned that initial offers should contain an offeror's best terms from a cost or price and technical standpoint.

Ten proposals were received by the March 23, 1995, closing time. Although Dylantic, the incumbent contractor for these services, submitted the lowest-priced

¹The RFP stated that the contractor must agree "to initiate performance of this contract using only the health care worker(s) whose professional qualifications have been determined technically acceptable by the Government as part of the source selection process."

offer, its proposal was found to be technically unacceptable due to deficiencies in the information provided to establish the qualifications of the individuals it proposed to perform the required services. Of 27 candidates proposed, only 7 were found acceptable; the remaining 20 were judged unacceptable based on the failure to satisfy at least one of the employee qualifications requirements. Upon learning of the resulting award to the second-low offeror (Chesapeake), Dylantic filed this protest with our Office.

Dylantic argues that it furnished sufficient information to demonstrate adequate qualifications for at least 21 of the proposed candidates. In addition, Dylantic contends that because it is the incumbent contractor for these services, and some of the proposed candidates found unacceptable were currently working as pharmacy technicians at the facilities to be staffed under the contemplated contract, contracting officials should have been well aware of their qualifications. In any case, according to the protester, it should have been allowed to submit clarifications to satisfy the alleged deficiencies or, in the alternative, the agency should have held discussions.

In reviewing an agency's technical evaluation, we will not reevaluate proposals; rather, we will examine the record to ensure that the evaluation was reasonable and consistent with the RFP evaluation criteria. Maritime Management, Inc., B-260311.2; B-260311.3, July 11, 1995, 95-2 CPD ¶ 11. In a negotiated procurement, any proposal that fails to conform to material terms and conditions of a solicitation should be considered unacceptable and may not form the basis for an award. IT Corp., B-258636 et al., Feb. 10, 1995, 95-1 ¶ 78. We find that the Navy reasonably determined Dylantic's proposal to be technically unacceptable because of a failure to satisfactorily establish the qualifications of its proposed candidates, as required by the solicitation.

Three of Dylantic's proposed candidates were found unacceptable due to the lack of a current BLS-C Cardiopulmonary Resuscitation and Emergency Cardiac Care Provider training certification card in their respective information packages--two packages contained no card, while the third included a card which had expired on March 15, prior to the March 23 closing time. Given this failure to demonstrate completion of the required medical training, which Dylantic does not rebut, we conclude that the three candidates were properly found unacceptable.

Three more proposed candidates were found unacceptable because their information packages did not demonstrate compliance with the solicitation requirement for either graduation from a pharmacy technician program or a minimum of 12 months experience in the preceding 36 months as a pharmacy technician. One individual's package did not show any pharmacy technician experience or completion of an accredited pharmacy technician program. The remaining two individuals' packages contained no proof of graduation from a

pharmacy technician program. Although their packages indicated pharmacy technician experience, they did not indicate dates of employment, so that it could not be determined whether they possessed the requisite 12 months experience in the preceding 36 months. While Dylantic maintains that the individuals are qualified, and has provided the relevant dates of employment for the latter two individuals in its comments on the agency report, its failure to furnish the required information in its proposal properly led the agency to find them unacceptable.

The seventh proposed candidate was found unacceptable because her information package contained only one acceptable letter of recommendation rather than the two required by the solicitation. A second letter was signed by an individual identified only as a "line supervisor," whereas the RFP required that the letter be signed by a practicing physician, pharmacist or pharmacy supervisor. Dylantic responds that the listed "line supervisor" is a pharmacy supervisor, but nothing in the letter of recommendation itself indicated that; the agency therefore reasonably determined the candidate to be unacceptable.

In addition, the Navy found three other candidates (as well as one of the candidates above) unacceptable because, while their packages contained photocopies of the front side of a current BLS-C Cardiopulmonary Resuscitation and Emergency Cardiac Care Provider training certification card, they did not include copies of the back of the card. The required BLS-C card contains information on its front side--the individual's name, course name, issue date and expiration date--and different information on its backside--name of the organization conducting the training, instructor's name, instructor's identification number and the holder's signature. The Navy reports that without the information on the backside, the certification of completion of the required training cannot be verified. Since the information on the backside was required by the solicitation to be included in the technical information packages and was necessary to assure compliance with a material solicitation requirement for medical training, the information itself was material such that failure to furnish it for a proposed individual rendered the candidate unacceptable.

In summary, we find that the Navy reasonably concluded that Dylantic failed to furnish for at least 10 of the 27 candidates for the pharmacy technician positions sufficient information to demonstrate compliance with the detailed personnel qualification requirements of the solicitation. Since 21 acceptable candidates were required, Dylantic's failure rendered its proposal unacceptable. (Given this conclusion, we need not consider the acceptability of the other candidates found unacceptable by the agency.)

Although Dylantic refers to its status as an incumbent contractor, such status does not serve as a substitute for the omitted information. An agency is not required to overlook a flawed proposal on the basis of the offeror's prior performance; on the

contrary, all offerors are expected to demonstrate their capabilities in their proposals. Pedus Bldg. Servs., Inc., B-257271.3 et al., Mar. 8, 1995, 95-1 CPD ¶ 135. Likewise, the mere fact that some of Dylantic's proposed candidates already work at one of the installations covered by the contemplated contract does not serve as a substitute for the omitted information; the three Branch Medical Clinics associated with the Naval Medical Center, Portsmouth are located within a 30-mile radius of the medical center, and the protester has offered no evidence establishing that the evaluators in fact were aware of the qualifications of the proposed individuals. Further, although a contracting agency in evaluating proposals may consider evidence from sources outside the proposals, see Continental Maritime of San Diego, Inc., B-249858.2; B-249858.3, Feb. 11, 1993, 93-1 CPD ¶ 230, agencies are not obligated to go in search of needed information, specifically requested by the solicitation, which the offeror has omitted or failed to adequately present. See Telos Field Eng'g, B-251384, Mar. 26, 1993, 93-1 CPD ¶ 271.

Dylantic complains that it was not given a chance to correct the informational deficiencies in its proposal through either the clarification process or discussions. However, since the information omitted from Dylantic's proposal was material in establishing the qualifications of the proposed individuals to perform the services, and thus essential for determining the acceptability of Dylantic's proposal, its omission could not properly be regarded as a minor informality or uncertainty to be cured through clarifications. IT Corp., supra. As for the Navy's determination not to conduct discussions with offerors, we note that the RFP clearly advised offerors of the agency's intent to award without discussions. Therefore, Dylantic could not reasonably presume that it would have a chance to clarify or improve its proposal through discussions; the burden was on Dylantic to submit an initial proposal that adequately demonstrated its own merits, and the protester ran the risk of not receiving award by failing to do so. Infotec Dev., Inc., B-258198 et al., Dec. 27, 1994, 95-1 CPD ¶ 52. Since the RFP clearly advised offerors of the agency's intent to award without discussions, and there was a reasonable basis for concluding that Chesapeake had submitted the low, technically acceptable offer,

there is no basis to object to the agency's decision not to conduct discussions. Federal Acquisition Regulation § 15.610(a)(4); Facilities Management Co., Inc., B-259731.2, May 23, 1995, 95-1 CPD ¶ 274.

Although Dylantic notes that it offered a lower price, approximately 1 percent lower than the awardee's, since Dylantic's proposal was unacceptable, it could not form the basis for award. Therefore, the fact that award was made to a higher-priced offeror provides no basis to object to the award. Western Environmental Corp., B-258567, Jan. 30, 1995, 95-1 CPD ¶ 46.

The protest is denied.

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