

DECISION



DIGEST - L - Cont
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

80-1 CPD 309

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FILE: B-193012

DATE: May 1, 1980

MATTER OF: Tulane University

DIGEST:

1. Allegations which in effect present reasons why procurement should not have been made on a competitive basis are untimely where not filed prior to due date for receipt of initial proposals since RFP clearly placed offerors on notice that award would be made through competition. 4 C.F.R. § 20.2(b)(1).
2. Protest allegations of solicitation improprieties which should have been apparent from a perusal of RFP are untimely when not filed until after due date for receipt of initial proposals.
3. Record presents no evidence of a "pre-selection" as charged by protester. Record reveals a thorough multi-level evaluation which laboriously documented merits and weaknesses of competing proposals.
4. Record does not support protester's allegations of bias on the part of certain proposal evaluators. Therefore, protester has not met burden of affirmatively proving her case.
5. Contracting agency is not required to equalize competition by nullifying competitive advantages enjoyed by offeror resulting from its own particular circumstances, including the performance of prior contracts, where competitive advantage has not resulted from preference or unfair action by the Federal Government.
6. Private dispute between protester and co-author of a professional paper that resulted in its

omission from abstract for medical society meeting is of dubious relevance to evaluation of proposals under RFP. Nevertheless, GAO fails to detect any prejudice to protester where protester was subsequently afforded opportunity to submit revised best and final offer in which protester included her most recent publications, and these were considered in evaluation of proposals.

7. Record does not support allegation that evaluators ignored protester's qualifications in epidemiology. While they concluded that she could probably perform the contemplated effort, they were compelled to make a comparative evaluation of competing proposals under the established evaluation criteria. Comparison of proposals thereunder showed several decisive advantages in competitor's proposal.
8. GAO finds no impropriety in evaluation where agency concluded that successful offeror's principal investigator could perform the contract notwithstanding various overseas commitments since successful proposal represented that only 25 percent of investigator's total time was to be consumed by performance of contract.
9. Record does not corroborate protester's charges that RFP requirements were relaxed for competitor. One such allegation actually involves dispute between protester and agency over comparative methodologies of achieving RFP's objectives rather than relaxation of its requirements. Conclusions of agency evaluators as to superior methodology will not be disturbed where not shown to be unreasonable or in violation of procurement statutes or regulations.

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Dr. _____ of the Tulane University School of Medicine has filed this protest against the award of a cost-reimbursement contract to the Louisiana State University Medical Center (LSU) under request for proposals (RFP) No. NCI-CP-FS-81036-65, issued by the National Cancer Institute (NCI), Department of Health, Education, and Welfare, for a case-control study of lung, pancreas and stomach cancers in southern Louisiana. Although performance was to commence by August 1, 1978, difficulties encountered in the proposal evaluation process delayed award of the contract until March 13, 1979; the award was made prior to our resolution of the protest pursuant to Federal Procurement Regulations (FPR) § 1-2.407-8 (b)(4)(i) after the contracting officer determined that the unacceptably high mortality rate required commencement of the project without further delay.

Although administrative officials of Tulane, as well as _____ signed Tulane's initial and revised proposals, we recognize that to a significant extent the content of the proposal, the evaluation thereof, and _____ protest allegations concern her professional qualifications and the approach she devised for performing this project. For example, we note that one-fourth of the points to be awarded in the evaluation of proposals were allocated to the "capabilities and experience of the Project Director": in Tulane's case,

We also note that she represented Tulane during the conduct of negotiations with NCI. In view of _____ position on the Tulane staff, her participation in the preparation of the University's proposal and negotiation on its behalf with NCI, we consider this protest to be by an "interested party" within the meaning of our bid protest procedures.

Some of _____ allegations concern issues extraneous to the proposal evaluation process. We shall address these prior to her objections to the evaluation of proposals.

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asserts that her work will suffer from NCI's failure to award this contract to Tulane because there is only one relevant population for research activities of a similar nature. She alleges that hospitals are reluctant to accommodate more than one such effort simultaneously due to interruptions in their routines. She reports that she already has a funded project from another agency requiring continued access to a part of this population; that she has other pending research grant proposals predicated on the use of part of this population; and contends there will be a "hi-jacking" of information developed by her in this area which would be provided to a competitor. (does not dispute that the Government has the legal right to furnish data it has purchased to whomever it desires, and asserts that this is not a legal, but rather a moral and ethical issue). Moreover, she contends that during the competition for the instant contract LSU enlisted support from certain hospital staffs which may preclude current and future cancer investigations by others.

These allegations, in effect, suggest that this study should not have been opened to competition.

Our Bid Protest Procedures, 4 C.F.R. Part 20 (1979), require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that date in order to receive consideration. Section 20.2(b)(1) In this instance, the RFP clearly apprised prospective offerors that this award would be made on a competitive basis, and should have been aware of the possibility of an award to a competitor that would result in the alleged consequences. Insofar as the allegations imply that the procurement should not have been opened to competition, it was obligatory that they be filed prior to the due date for receipt of initial proposals in order to receive consideration by this Office. Since they were not filed until offers had been evaluated and the prospective contractor had been tentatively selected, they are untimely and ineligible for consideration on the merits.

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For the same reason, we also consider to be untimely allegations that NCI failed to pursue "suggestions" regarding the possibility of a "cooperative" effort for this study and that the broad guidelines provided in the RFP for "budget development" [i.e., the computation of estimated costs] were not consistent with a "service project". As previously discussed, the RFP sufficiently apprised offerors that the ensuing contract for this study was to be awarded on the basis of competition. In addition, the RFP advised that the prospective contractor would serve as a "field-operating research/service collaborator" with NCI for the study, and provided specific guidelines for the preparation of a proposed budget. Since the basis for these allegations also should have been apparent from a perusal of the RFP, but were not filed until after selection of the LSU proposal for award, we find that they are untimely under the provisions of section 20.2(b)(1).*

A synopsis of the RFP's requirements and a brief procurement history is essential to an understanding of allegations of improprieties in the proposal evaluation process.

The RFP required the successful offeror to serve as a field-operating research/service collaborator for the study which would be undertaken and designed by NCI's Environmental Epidemiology Branch in conjunction with the Environmental Protection Agency. The contractor was required to collaborate with the Environmental Epidemiology staff in the "final design phase" of the project. However, offers were to be submitted and evaluated on the basis of a "preliminary study design" calling for the identification and interviewing of hospital controls and all newly diagnosed cases of specified cancers in designated racial groups. The contract was expected to last for 2 years, with initial award to be made for 12 months on a renewal basis. The contractor was required, inter alia, to prepare a questionnaire, to obtain approval from each of the hospital administrators, other physicians or any other entity from which approval

was required to conduct interview studies among the inpatients, and obtain informed consent from cases and controls before conducting interviews so as to comply with Federal and state requirements pertaining to privacy and the protection of human subjects.

The RFP set forth the qualifications expected for the project director [also called the "principal investigator"], stressing expertise in designing epidemiologic studies, experience in the field of cancer epidemiology, and a close relationship with the medical community in southern Louisiana to ensure full cooperation in this study. Also specified were qualifications for other personnel such as the Field Management Specialist, Abstractor/Field Interviewers, Computer Programmer/Analyst, etc.

The technical evaluation criteria were set forth as follows:

"Evaluation Criteria

The criteria listed below will be followed in evaluating proposals in reply to this RFP:

1. Staff (70 Points)

- a. Capabilities and experience of the Project Director in the designing, conducting, and analyzing stratified case-control field interview studies, especially on projects similar to this proposal.

Weight (25)

- b. Capabilities and experience of the Field Management Specialist (may or may not be the same individual as the Project Director) in conducting field studies, especially in the supervision of field interviewers and data collection and recording.

Weight (20)

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- c. Capabilities and experience of the proposed minimum of 4 medical abstractors/ field interviewers (5 each).

Weight (20)

- d. Capabilities and experience of the proposed computer programmer/analyst.

Weight (5)

2. Experience of the Contractor that demonstrates the existence of: (20 points)

- a. A close working relationship with the state and local health officials and the medical community in southern Louisiana.

Weight (10)

- b. The Contractor's familiarity with the population of southern Louisiana.

Weight (10)

3. Facilities, including office and computer equipment.

Weight (10)

Total: (100)"

Proposals submitted were provided by the contracting officer to an outside review committee, the Biometry and Epidemiology Contracts Review Committee (B&ECRC) comprised of five scientists involved in cancer research. The members of this committee numerically scored the proposals against the evaluation criteria and furnished narrative comments as to the various strengths and weaknesses of the proposals. While each of the two proposals at issue had its respective strengths vis-a-vis the other, the composite scoring of all five members resulted in a cumulative score of 86.5 for the LSU proposal compared to 81.2 for Tulane.

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The proposals, along with the B&ECRC's scores and narrative comments, were then furnished to the Source Evaluation Group (SEG), an in-house committee comprised of members of NCI's Environmental Epidemiology Branch. Prior to the SEG's assembly, each member had evaluated the prospective proposals individually, at which time each member read aloud what he had written concerning the deficiencies and merits of each proposal, and after discussion, each member rated the LSU proposal superior to that of Tulane.

It was determined that both the LSU and Tulane proposals were within the "competitive range" and that those offerors were eligible for the conduct of further negotiations. Accordingly, each offeror was furnished with a letter definitizing discerned weaknesses which required correction or clarification through proposal revision, and offerors were permitted until September 7, 1978 to submit their responses.

After receiving the proposal revisions, each member of the SEG re-evaluated the proposals. The SEG then convened on September 14 during which each member read aloud his findings and his indication of first choice for award. Again, it was unanimous that the LSU proposal was superior.

However, after the protest was filed, HEW notified our Office that negotiations were not properly concluded in that one offeror was afforded an opportunity to modify its proposal after the receipt of best and final offers. As a consequence, the contracting officer, by letter of January 16, 1979, notified each offeror that negotiations were being re-opened and that each would be allowed to submit a final revised proposal no later than January 29, 1979.

By memo of February 2, 1979, each SEG member was requested to evaluate these final proposal revisions, to reread all prior submissions, again compare the two, and prepare comments for the final meeting of the SEG which was held on February 13, 1979. Each member brought his prepared evaluations which were read and then discussed, after which a vote was conducted and LSU once again was recommended unanimously for award.

The principal reasons offered for the selection of the LSU proposal were an existing state-wide network of hospital, physician and other contacts and ongoing collaborations which would be of considerable value in performing the project; a staff of experienced professional persons already involved in other cancer epidemiologic studies and possessing great familiarity with the geographical and cultural aspects of the target area; the vast superiority of LSU's Project Director, _____, in terms of years of experience (approximately 25) and publications (in excess of one hundred) in the field of cancer and cancer epidemiology over _____ who had not entered the field until 1975 and had collaborated on only a small number of publications in this area; and LSU's budget, close to the amount of funds available for the project and approximately \$30,000 lower than Tulane's, which NCI considers to be the result of a simpler and more cost-efficient approach for identifying and interviewing controls, and yet adequate to obtain the required results.

_____ speculates that there was a pre-selection of the LSU proposal because in May 1978, a professional interviewing company from which she requested a bid refused to submit an offer purportedly because it had reason to believe that LSU would receive the award. She also questions the impartiality and objectivity of both the B&ECRC and the SEG. She asserts that the former did not have a full complement of its members present, and one member allegedly was a close working associate of _____; she contends that _____ was also a former colleague of a number of members of the SEG but that people who have worked with her were excluded.

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The record of this procurement, as outlined above, fails to substantiate contention of a pre-selection. To the contrary, it reflects a thorough and conscientious effort to examine each proposal on its merits, and contains detailed documentation of both the strengths and weaknesses of each proposal and specific reasons for the selection of the LSU proposal. The evaluation was laborious, as evidenced by the volume and specificity of the documentation, and our thorough review of that record permits no other conclusion than that the evaluation of proposals and selection for award were undertaken in good faith. NCI advises it has no knowledge of any contact between its officials and professional interviewing companies in Louisiana, leading it to believe that the comment allegedly made to may have been speculative.

Concerning the composition of the B&ECRC, the record shows that five members of that committee evaluated proposals as opposed to a purported full committee membership of ten. However, NCI states that due to occasional vacancies in some positions and unavailability of other members at any particular time, it is extremely difficult, if not impossible, to convene a full committee of ten members. Moreover, has made no allegation or submitted any evidence to indicate that a five member panel was in violation of the committee's charter or operating rules, or that it did not properly constitute an acceptable quorum under the committee's own procedures.

As to her implications of a lack of impartiality in either group, we have held that a protester has the burden of affirmatively proving its case in such matters. Industrial Writing Institute, Inc., B-193245, May 10, 1979, 79-1 CPD 328.

has identified one member of the B&ECRC as a close working associate of and allegedly biased in his favor. However, in reviewing the individual ratings of that committee, we find that member rated the Tulane proposal superior to that of LSU by a score of 90 to 85. As to her charge that the SEG included members who once worked with but none who worked with her, NCI

has responded that _____ was once a visiting scientist at NCI from 1971 to 1974, but had not been a colleague of any member of the SEG, and in fact, none had ever met him. _____ has neither contested this statement nor provided any evidence to refute its veracity. In view thereof, and of the absence in the record of any other evidence of bias or "favoritism" by either committee towards the LSU proposal, we do not consider the protester to have met her burden of proof in this instance.

_____ submits several reasons why she believes LSU was conferred with an unfair competitive advantage in the procurement.

She points out that after she had submitted her initial proposal, the deadline for receipt of proposals was extended from June 19, 1978 to July 10, 1978, thereby providing LSU with additional time for preparation of its offer. In addition, she points to LSU's participation in an ongoing NCI Bladder Cancer project using the same questionnaire as likely to be proposed for this project, and the availability to LSU of an interview team allegedly "trained" by NCI. She asserts that the bladder cancer project was not obtained through competitive bidding, but by assignment through the Louisiana Tumor Registry without the prior approval of its Research Advisory Board or the knowledge of its principal investigator. She furthermore states that she was placed at a competitive disadvantage in offering her proposed budget since LSU, as a state institution, was the beneficiary of tax-supported funding and in a better position to cost-share at least the indirect costs of the effort; consequently, this factor was instrumental in explaining LSU's lower proposed budget.

We fail to discern any competitive advantage afforded LSU by the extension of the due date for initial proposals. NCI explains it extended the due date because there was a need to clarify certain aspects of the RFP pertaining to subcontracts, and the agency wished to permit potential offerors enough time to make any revisions

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necessary as a result of the clarification. Moreover, NCI reports that both the Tulane and LSU proposals were received on June 12, 1978, and that during the period of extension, only Tulane chose to submit additional information.

We have consistently held that a contracting agency is not required to equalize competition on a particular procurement by considering the competitive advantage accruing to an offeror from its own particular circumstances, including the experience and other advantages derived from the award of prior contracts. The test to be applied is whether the competitive advantage enjoyed by a particular firm in any given procurement resulted from a preference or unfair action by the Government. See Wisner and Becker Contracting Engineers, B-191756, March 6, 1979, 79-1 CPD 148, and citations therein. Inasmuch as the sole source bladder cancer study project was awarded by NCI to the Louisiana Tumor Registry rather than directly to LSU, and since state financial aid to LSU is necessarily the consequence of action by the Louisiana state legislature, we are unable to conclude that any competitive advantages inuring to LSU from these factors are the result of a preference or unfair action by the Federal Government.

alleges that in the selection process, HEW failed to pay due attention to the restraints imposed by the state medical privacy act which she considers to have been violated by the LSU proposal, and that the responses of Tulane and LSU to these constraints were not evaluated from a comparative standpoint. She predicates her belief upon advice allegedly provided by Tulane's legal counsel as to what methods of patient identification and solicitation would be acceptable, implying that LSU would not comply with such requirements.

Our review of the LSU proposal reveals a definite commitment to the protection of human subjects and their privacy. LSU executed an appropriate certification for HEW; its proposal represented that its field investigators would undergo a special orientation and training session

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to familiarize them with "the procedures for guarding the privacy of the interviewee, and the regulations relative to the protection of the rights of human subjects"; it stated that LSU's current practices require that the interviewer must present the patient with an "informed consent" form and commence the interview only if the patient agrees; and represented that it had previously made arrangements with the hospitals to "take care of all of the requirements of the informed consent regulations, protection of human subjects and privacy act."

Contrary to the protester's implication, compliance with the medical privacy act was not included among the RFP's evaluation criteria. Rather, this matter was addressed only in the statement of work which merely required the contractor to obtain informed consent from cases and controls with approval from their physicians before conducting interviews "in accordance with" laws pertaining to privacy. Nowhere did the RFP attempt to interpret these laws by definitizing what would or would not constitute compliance.

In view of the foregoing, we must conclude that all the RFP was seeking was a commitment to comply with all pertinent laws and regulations in this area, and we believe that LSU made such a commitment.

next directs attention to a dispute with an official of the Environmental Epidemiology Branch at NCI over the failure to timely publish an abstract of a paper on lung cancer mortality which she co-authored with that official. She charges this official with intentionally withdrawing and holding up, to her detriment, publication of this and other information.

The record reveals that the NCI official in question was not one of the members of NCI's SEG that evaluated proposals. Furthermore, the correspondence furnished by reveals that this is a private dispute

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between herself and her co-author that arose not in the context of this procurement but rather of an upcoming meeting of the American Public Health Association (APHA). There was apparent disagreement between and her co-author as to the accuracy of the initial abstract, resulting in its omission from the program for the APHA meeting.

We are hard-pressed to determine the relevance of this matter to the evaluation of proposals herein involved. We do note that revised best and final offer included copies of several recent papers which she co-authored, and that these were taken into account in the evaluation of revised best and final offers.

asserts that some of the individuals who helped prepare the LSU proposal were from another institution. She claims this should invalidate the proposal since these individuals will not be involved in the project's performance.

NCI states that it does not know who participated in the preparation of the LSU proposal. However it points out, and we concur, that there is no legal proscription against such collaboration provided the Government does not assist in the preparation of an offeror's proposal. More importantly, the evaluation of the qualifications of the offerors' personnel was made on the basis of the resumes of only those persons who would be involved in the performance of the project.

The protester next charges that the SEG ignored the B&ECRC's comments regarding certain inherent strengths of the Tulane proposal and weaknesses in LSU's. She also questions professional qualifications in the field of epidemiology, asserting that he has no formal training in areas required for this study. On the other hand, she contends that the summaries of the review prepared by the contract office indicate a failure to recognize her experience which was clearly set out in her proposal.

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She contests LSU's purported statement that it was the only institution with the hospital support to perform this project, claiming NCI ignored information in the Tulane proposal depicting Tulane's resources. In this regard, she alleges that her independent investigation revealed that LSU did not obtain the cooperation of various hospitals and pathologists in the proposed study area, essential to the initiation of the project on the date indicated. Rather, the letters of support attached to the LSU proposal were in many instances dated in advance of the RFP's availability, leading her to believe that such commitments were made on behalf of another project.

She asserts that there was a failure to validate the work, and alleges that not only was [redacted] a reservist in a foreign army but he also had overseas research responsibilities, raising the question whether he could devote the time and effort necessary for the performance of this study.

We have consistently held that procuring officials enjoy a reasonable range of discretion in the evaluation of proposals and in the determination of which offer or proposal is to be accepted for award, and that such determinations are entitled to great weight and must not be disturbed unless shown to be unreasonable or in violation of procurement statutes or regulations. METIS Corporation, 54 Comp. Gen. 612, 614-50 (1975), 75-1 CPD 44. The mere fact that the protester does not agree with that evaluation does not render the evaluation unreasonable. Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87.

The record does not support [redacted] contention that the SEG ignored certain particular strengths in the Tulane proposal and weaknesses in the LSU proposal that were discerned by the B&ECRC. To the contrary, the record shows that the SEG prepared a detailed comparison of both strengths and deficiencies in each proposal as a result of not only its independent review of respective proposals, but also of its study of the conclusions of the B&ECRC.

professional qualifications in the field of epidemiology were not ignored. In fact, the decision to select LSU for award was not predicated upon a finding that either _____ or her proposed staff was incapable of satisfactorily performing this study. To the contrary, the SEG indicated that her experience in epidemiology and other information in the Tulane proposal led them to believe that Tulane could capably perform the contemplated effort. However, they were compelled to perform a comparative evaluation of proposals based on the evaluation factors set out previously in this decision. On that basis, the record showed a comparative strength of the LSU proposal under several of the key evaluation criteria including, for instance, prior experience in the actual conduct of case-control field interview studies which resulted in on-going working relationships with hospitals and state and local health officials in the southern Louisiana medical community. Our review of the record indicates that the comparative advantages of LSU in these areas were among the critical determinants of the selection for award.

With regard to the allegation that the LSU proposal did not contain letters of support from every hospital and pathologist in the proposed study area, the LSU proposal does contain a number of letters from major hospitals expressing such support. As indicated by Dr. _____, there is evidence in some of these letters that the support to be provided is merely an extension of existing support for an ongoing lung cancer case-control study which _____ was already performing under funding from the American Cancer Society. However, the LSU proposal specifically indicates that since hospital approvals had already been obtained for that on-going study, the expression of support for the LSU proposal will require only a modification of such approval to encompass any changes required by the project contemplated by the RFP.

A distinction must again be made between the criteria under which proposals were to be comparatively evaluated and the RFP's statement of work.

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The statement of work merely required that approval be obtained from each of the hospital administrators or other source from which approval is necessary to conduct a case-control study among patients. The RFP did not require the submission with proposals of a letter of approval from each and every source that may ultimately be utilized, and it is doubtful that either LSU or Tulane included letters of approval from each and every potential source.

What was required by the RFP's criteria for comparative evaluation was a showing of experience of competing offerors demonstrating the existence of a close working relationship with state and local health officials in southern Louisiana. In this instance, LSU's superior rating was the product of an ongoing working relationship with key hospitals that had already established in the conduct of prior case-control field interview studies of cancers in southern Louisiana; since [redacted] has not yet conducted such a study, these relationships had yet to be established in her case. We therefore find a reasonable basis in the record for LSU's superior rating under this criterion.

With regard to [redacted] overseas research commitments, NCI points out that the LSU proposal calls for [redacted] to devote only 25 percent of his time to this study. In view thereof, and of LSU's approval of this project while cognizant of these other commitments, NCI has determined that there is no evidence to indicate that [redacted] will not be able to fulfill the 25 percent commitment.

[redacted] also raises several questions as to both the negotiations about, and evaluation of, the proposed budgets of each offeror. She points out that the RFP required a minimum of four experienced interviewers having at least one year's field experience under conditions similar to this project and meeting other specified requirements. She contends that she had a staff working under her which met these requirements

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and yet she was asked by NCI, in the course of budget discussions, whether she could come up with a cheaper substitute. This led her to believe that the RFP's requirements had been relaxed for LSU in this area, and that this relaxation partially explained LSU's lower proposed price.

To buttress her belief that the LSU budget was not submitted and evaluated on the basis of the full scope of work required by the RFP, she also alleges that her budget was costlier than LSU's because she fully complied with her interpretation of the requirements of the Louisiana Medical Records Privacy Act regarding physicians' consent prior to obtaining patient information whereas LSU had not fully done so. Accordingly, she feels that the budget which LSU submitted represented only a partial year of data collection whereas her budget was based on a full year's effort.

And finally, in this regard, she alleges that LSU's lower proposed budget was attributable in part to a failure by the LSU proposal to comply with the RFP's statement of work requiring the identification of all newly diagnosed cases during a twelve month period. She contends that her proposal, including her budget, undertook to comply with this requirement by including all parishes and all hospitals in the study area whereas the LSU proposal was limiting the study to only the major Louisiana hospitals; and yet, her approach was criticized by evaluators as impractical and unrealistic whereas LSU's methodology was considered by the SEG to be more feasible.

With regard to NCI's budget discussions concerning proposed interviewers, we find no evidence of a relaxation of the RFP's requirements for either LSU or Tulane. What the record does reveal is that evaluators found that the qualifications of the interviewers proposed by both offerors substantially exceeded the RFP's requirements, primarily because they were overeducated. Price discussion memoranda in the record reveal that the SEG aspired to reduce the proposed budgets of both LSU and Tulane through inquiry whether there could be substituted interviewers in each

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case with less education but who nevertheless met the minimum personnel qualifications set out in the RFP. The SEG felt that if such persons were available, they would not command as high a salary as those presented in the LSU and Tulane proposals with the result that proposed costs of each offeror could be reduced accordingly.

Nor do we find any relaxation for LSU of the RFP's requirement to obtain informed consent from cases and controls and to comply with medical privacy requirements. As previously discussed, the RFP placed the burden of compliance on the contractor and did not attempt to specify what would or would not constitute compliance. It is therefore implicit that both LSU and Tulane would act in accordance with the advice of each institutions's legal counsel concerning compliance. Accordingly, we must conclude that whatever administrative costs were to be incurred for full compliance were necessarily incorporated into LSU's proposed budget.

NCI insists, and our close scrutiny of the record confirms, that there was no relaxation for LSU of the RFP's requirement to identify all incident cases in the designated areas.

The record reveals that, upon evaluation of LSU's initial proposal, NCI was concerned that LSU might be limiting its efforts to a relatively small number of major hospitals with the result that not all cases would be included in the study. NCI requested clarification of this matter, and in its revised proposal, LSU responded that the hospitals which it had previously enrolled in its American Cancer Society study included a large majority of the patients with cancer types which were the subject of the RFP study, and with the additional funding provided by NCI for the study contemplated by the RFP, LSU would enroll other hospitals with pathology facilities in each designated area. LSU specifically committed itself to work "with every hospital or medical facility [with pathology facilities] in the area where

cases may be expected." By utilizing all pathology facilities in a given area, it expected to identify approximately 90 percent of all cases in southern Louisiana, and indicated that the number of missed cases would be ascertained through other mechanisms including surveillance of tumor registries.

, on the other hand, approached the RFP's requirement by indicating she would utilize each and every hospital in an area, irrespective of size, and would strive to attain a working relationship with each.

The RFP's statement of work did not specify any particular methodology for ascertaining "all" incident cases, but presumed a contractor's familiarity with the medical environment of each area and left decisions as to the methodology to the discretion of each offeror. What the record shows is not a relaxation of the scope of work for LSU but different methodologies proposed by each offeror to fulfill the RFP's requirements. In evaluating the respective approaches, the SEG had grave reservations as to the efficacy of proposed attempt to obtain the cooperation of each and every hospital in a given study area because it necessitated not only the complete cooperation of many physicians among the various hospitals but also their active participation in the study in obtaining consent, filling out forms, sending letters, etc. In the words of one evaluator, which reflected the consensus of the SEG, such an approach "would almost certainly result in problems that could affect the quality of the research desired." The evaluators felt that, from their experience, the imposition of such an array of instructions and clerical work on all these individual physicians would be likely to "produce a disastrous response rate among cases."

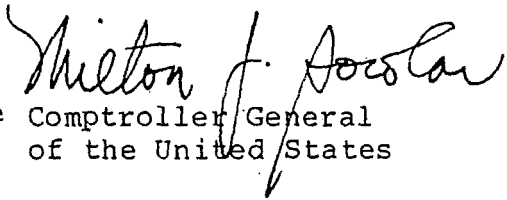
They therefore considered LSU's proposed methodology, with primary reliance on a pathology laboratory network, supplemented by other techniques to ascertain the small remainder of cases, more efficient and realistic in fulfilling the RFP's statement of work. It would also appear, in our opinion, that LSU's methodology may also have been partially responsible for its lower proposed budget.

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In summation, what we perceive from the record is not a relaxation of the RFP's scope of work but rather a disagreement between and NCI evaluators over the merits of the respective proposed methodologies in complying with the scope of work. As previously indicated, procuring officials are afforded a reasonable range of discretion in performing evaluations and arriving at conclusions, and our Office will not disturb these determinations, even though the protester may disagree with them, unless they are shown to be unreasonable or in violation of procurement statutes or regulations. See METIS Corporation, supra, and Honeywell, Inc., supra. Since we find no violation of procurement statutes or regulations, and since we also believe that the record contains a credible basis to support NCI's preference for LSU's methodology, we will not interpose our objection to that determination notwithstanding Dr. Gottlieb's disagreement therewith.

The protest is dismissed in part and denied in part.


For the Comptroller General
of the United States