

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

26524

FILE: B-207670**DATE:** September 23, 1983**MATTER OF:** Science Management Corporation**DIGEST:**

1. A complaint filed with a proposal alleging that the information in the solicitation and the documents available under the solicitation were not adequate for preparing a proposal involves a defect on the face of the solicitation and therefore is not timely since it was not filed before the time set for receipt of proposals.
2. Complaint that grantee should not have considered "turmoil" that would be caused by replacing the incumbent contractor--because such "turmoil" was not identified as an evaluation factor--is denied. Grantee has shown that consideration of the matter was prompted not by an unfair desire simply to retain the incumbent contractor, but by concern with anticipated disruption of the work based upon the complainant's experience on a similar job and its proposed method for performing the work, which concerns clearly were related to the solicitation's stated evaluation factors.
3. Although grantee should have amended the solicitation if it wished to take into account the effect that a substantially reduced caseload would have upon proposed price, it has not been shown that this prejudiced the complainant because the complainant's proposal was so seriously deficient otherwise that it stood little chance of selection.
4. Determination of the relative merits of proposals in response to a grantee's solicitation is primarily the grantee's responsibility, and therefore will not be questioned by GAO unless shown to be arbitrary or to violate procurement statutes or regulations.

122432
026736

5. GAO will not consider objections to the way a grantee conducted a procurement that were first raised in the complainant's comments on the grantor agency's report on other matters raised by the firm, since the objections could have been raised initially, and it would be inappropriate to allow the grant complaint process to proceed in a piecemeal manner.

Science Management Corporation (SMC) has asked us to review the award of a contract to MCAUTO Systems Group, Inc. by the State of Delaware pursuant to a grant from the Department of Agriculture under the Special Supplemental Food Program for Women, Infants and Children, 42 U.S.C. § 1786 (1976), popularly known as the WIC program. The contract is to operate Delaware's existing automated management information system, which controls the receipt and issuance of instruments entitling WIC beneficiaries to food deliveries.

We dismiss the complaint in part and deny it in part.

Request for proposals No. 4960 required the contractor to install the existing WIC software on its own computer. The solicitation also required delivery of a documentation manual within 90 days after award. Delaware received proposals from MCAUTO (the incumbent contractor) and SMC. MCAUTO proposed to continue using an IBM mainframe computer for its data processing operations. SMC proposed to perform data processing on a mini-computer after validating the existing software on an IBM central computer. Out of a possible 510 points for technical proposals, the evaluators gave MCAUTO 455 points and SMC 381 points.

By memorandum of February 19, 1982, the Delaware evaluators noted (1) that SMC failed to offer a required deliverable, the documentation manual for the existing software; (2) that award to MCAUTO would avoid the "turmoil" accompanying the change to a new contractor; and (3) that because the offerors' proposed costs per recipient of WIC benefits varied with the number of recipients, award to MCAUTO would result in a cost savings if the number of

recipients was reduced because of Federal budget cuts (and thus program funds) recommended by the President. The evaluators therefore recommended award to MCAUTO, and this recommendation was approved by Delaware management officials and, subsequently, by the regional office of the Department of Agriculture.

Upon receipt of Delaware's letter of April 12 advising of the selection of MCAUTO, SMC requested a debriefing and copies of the evaluation documents, both of which Delaware provided on May 12. SMC protested to the state in writing the following day and outlined its concerns in detail by letter of May 24. By letter of May 25, received by this Office on May 27, SMC filed the same complaint here. After giving SMC notice, Delaware proceeded with award to MCAUTO.

Documentation manual

SMC complains that its proposal should not have been penalized for failing to offer a documentation manual of the current system, because it did not have an opportunity to review the existing system documentation and thus was not able to offer the item. SMC argues that although the solicitation stated that a user's manual and data processing documentation were available for inspection by prospective contractors, only the user's manual was available when SMC inquired. SMC also notes that prior to the issuance of the solicitation, it requested detailed information about the existing WIC system from Delaware, which Delaware simply referred to MCAUTO, and that MCAUTO did not reply until after proposals had been received and evaluated.

We dismiss this issue as untimely raised. Grant complaints must be filed within a reasonable time so that we can decide an issue while it is still practicable to recommend corrective action, if warranted. In most instances, the only reasonable time for filing complaints in which solicitation deficiencies are alleged is the same time required in our Bid Protest Procedures (which apply to direct Federal procurements), i.e., before the time for receipt of proposals. Caravelle Industries, Inc., 60 Comp. Gen. 414 (1981), 81-1 CPD 317. Therefore, in order to be considered filed within a reasonable time, a complaint based upon improprieties in a solicitation must be filed before proposals are due. An offeror does not satisfy this requirement by submitting with its bid or

proposal objections to the terms of the solicitation. Such protests to the grantee agency are untimely, as are subsequent complaints to this Office. Export Trade Corporation, B-210668, February 25, 1983, 83-1 CPD 189.

Prior to the submission of proposals, when SMC attempted to review the information that the solicitation said would be available for inspection, it found that no information on the current WIC system, other than the user's manual, was available. If at that stage SMC believed that the materials made available for review under the solicitation were not adequate to permit it to offer the item in question, it should have made its objections known at that time, either by protest to Delaware or by complaint to this Office. Instead, SMC chose not to object until it submitted its proposal on the due date of February 5, 1982, when it stated in an "exception sheet" furnished with its cost proposal that it could not comply with the requirement because adequate documentation was not available. In these circumstances, SMC's complaint, first voiced in its proposal, is untimely. Export Trade Corporation, supra.

Change of contractors

SMC contends that the turmoil caused by contractor changeover should not have been considered in the selection decision because it was not set forth in the solicitation as an evaluation factor. As evidence that contractor changeover was a major consideration in evaluation and selection, SMC proffers Delaware's memorandum of February 19, 1982 recommending MCAUTO's selection in part because "it would be administratively cost effective and time efficient to be able to utilize the present company, thereby eliminating any turmoil which could accompany major changes." Also, a February 26, 1982 Delaware internal summary of the evaluation expressly recognizes the "turmoil which could accompany major changes."

Delaware contends that these statements are misleading when taken out of context, and explains that they relate to concerns that could properly be considered in evaluating SMC's proposal. According to the information available to Delaware, the State of Maryland experienced serious

difficulties in its WIC program after SMC replaced another contractor, and the "turmoil" referred to reflected a concern with SMC's particular capability to take over the contract as opposed to a mere desire by the state to keep MCAUTO. Delaware argues that Maryland's experience was properly considered in the selection both because Maryland's contract was listed as a reference in SMC's proposal and because experience was a stated evaluation factor. Delaware further argues that SMC's proposed method of operation, involving the conversion of existing software for use on a mini-computer, poses additional risks that are not anticipated with MCAUTO's continued use of a mainframe IBM computer.

We find no legal merit to SMC's complaint. While evaluators cannot judge the merits of proposals based on criteria that prospective offerors were not advised would be considered, evaluators properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated criteria. Madison-McAfee-Stull Transit Group, B-203766, April 5, 1982, 82-1 CPD 301. We recognize that Delaware's unfortunate choice of wording, quoted above, may make it appear that the state simply and unfairly was seeking to retain the incumbent contractor. Nevertheless, we have reviewed the record thoroughly, and we believe that Delaware has amply demonstrated that its comments concerning the possibility of turmoil should SMC assume the contract were justified and legitimately related to the overall acceptability of the firm's offer rather than to an improper preference for the incumbent contractor.

Program reduction

SMC contends that Delaware evaluated prices improperly when it considered the possibility of a reduction in the WIC program. SMC argues that if Delaware wanted to take into account a possible reduction in the WIC program in evaluating prices, it should have amended the solicitation and given all offerors the opportunity to compete on a uniform basis. According to SMC, if it had known that Delaware intended to evaluate proposals on the basis of reduced levels of participation, the firm would have proposed a less costly method for doing the work.

The solicitation did not state what level of WIC participation would be used for evaluation, but simply advised that Delaware currently served approximately 5,000 WIC participants. The solicitation sought a single cost proposal on an "active client" per month basis and stated that the evaluation process would result in the selection of the proposal "with the most favorable combination of high technical value and low overall cost."

Both offerors proposed pricing with increased unit costs as caseload went down, but because they picked different breakpoints and a different number of breakpoints, the low offeror varied with the caseload. MCAUTO was always low when the caseload dropped below 2,500 and SMC was low when the caseload exceeded 6,000; the low offeror varied for caseloads in between those figures, with SMC low for the anticipated caseload of 4,700 recipients. However, the memoranda of February 17 and 26, 1982, recommending approval of MCAUTO's selection, emphasize that award to MCAUTO would result in a substantial cost savings if offerors were evaluated based on a 40 percent budget cut then proposed by the President.

While the solicitation does not state what caseload would be used for price evaluation, we believe that the fair implication of setting forth the existing caseload of 5,000 in the solicitation, and nothing more, is that that number would be used. Further, the fact that both offerors proposed pricing structures that encompassed a possible 40 percent reduction in caseload does not indicate that Delaware was justified in using that possibility to support its selection. As noted by SMC, which was low based on a caseload of 5,000 as well as on the anticipated (and evaluated) caseload of 4,700, had it known that proposals were to be evaluated on the basis of a substantial reduction in caseload, it could have proposed a different, less costly approach for supporting the WIC program. Consequently, we believe that Delaware should have communicated to the offerors its desire to evaluate prices on the basis of a reduced caseload (through, for example, an amendment to the solicitation) if it wished to consider that possibility in the selection.

We are persuaded, however, that SMC suffered no prejudice by this failure because, as Delaware argues,

SMC's proposal was so much less desirable overall than MCAUTO's, perhaps even technically unacceptable since a required deliverable was not offered. Moreover, SMC's proposed price did not include potential software revisions and other costs that might result from award to it. Given these facts and the slight difference in the pricing structures, there simply is no reasonable basis on which to believe that Delaware would have selected SMC over MCAUTO even if only the then-current caseload was considered.

Accordingly, while we believe that possible reductions in the WIC caseload should not have been considered in the evaluation, we also believe that Delaware's selection determination is supported by the record.

Other evaluation matters

SMC contends that Delaware's evaluation of SMC's proposal was unrealistic and was not objective. As noted above, Delaware provided SMC with a complete record of its internal evaluation of proposals at the debriefing, and SMC questions, item by item, the scoring of its proposal.

The determination of the relative merits of proposals is the responsibility of the activity that solicited them, and requires weighing competing subjective considerations and exercising sound discretion. WASSKA Technical Systems and Research Company, B-189573, August 10, 1979, 79-2 CPD 110. Our Office therefore will not disturb an activity's determination unless it is shown to be arbitrary or to violate procurement statutes or regulations. Price Waterhouse & Co., B-203642, February, 8, 1982, 82-1 CPD 103.

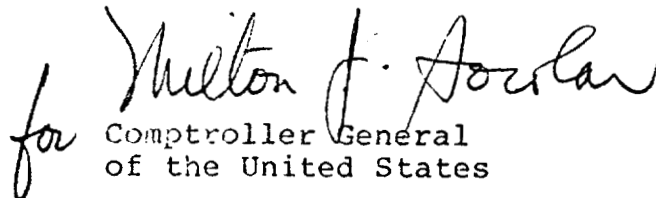
We deny this aspect of the complaint, because SMC has not made such a showing here. Although the record evidences substantial disagreement concerning the relative merits of proposals, we cannot conclude that Delaware's evaluation was unreasonable or otherwise improper. In fact, based on our review of the record, if Delaware erred in its evaluation of SMC's proposal, it erred in SMC's favor, since the differences between SMC's proposal and MCAUTO's appear more substantial than the 74-point scoring difference would indicate. This may be attributable to the fact that Delaware did not rescore SMC's technical proposal after the state discovered SMC's "exception sheet" in its

cost proposal, which was not reviewed until the technical scoring was completed. In this regard, Delaware advises that had the technical evaluators known of SMC's exceptions at the time, they would in all likelihood have rated SMC's proposal as technically unacceptable.

Obligation to conduct discussions

In its comments on the Department of Agriculture's report to this Office, SMC added some objections to those in its initial complaint. These primarily concern SMC's contention that Delaware was obligated to conduct discussions with the firm under both Federal law and the terms of the solicitation. We do not believe that it is appropriate to allow the grant complaint process to proceed in a piecemeal fashion, and we therefore decline to consider these objections. Hispano American Corporation, B-200268, March 17, 1981, 81-1 CPD 201.

The complaint is dismissed in part and denied in part.

for  Milton F. Jordan
Comptroller General
of the United States