

DECISION



17183 PL-II
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE:

B-194734

DATE: August 22, 1979

MATTER OF:

Informatics, Inc.

CNG00803

DIGEST:

1. Where RFP does not specifically state that a phase-in cost factor will be assigned to all proposals other than the incumbent contractor's proposal, agency may not consider such costs in evaluation of proposals.
2. Where solicitation is silent on point, offerors could assume that evaluation subfactors are weighted equally, and where there is no evidence in record suggesting that technical review committee placed more emphasis on any one evaluation subfactor than another or that some subfactors were not considered during evaluation, there is no basis to find evaluation was improper.
3. Where agency's written policy prohibits project officer and assistant project officer from participating in proposal review process, adverse written comments from these individuals concerning merits of awardee's proposal properly were not considered by agency.
4. Failure of technical review committee to review critical report of site visit does not cast doubt on validity of its evaluation because report dealt only with firm's existing facilities and did not take into account its ability to arrange for any additional facilities which firm offered to furnish if needed.
5. Although technical review committee did not review protester's best and final offer of more modern data entry system, further technical evaluation of proposals is unnecessary since

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[PROTEST ALLEGING ERROR
IN TECHNICAL EVALUATION]

protester's revised proposal which was considered by the committee provided the more modern data entry system as an optional feature.

6. Where record shows that agency may have erroneously computed protester's final technical rating on the basis of one evaluator's analysis of the firm's initial proposal rather than its revised technical proposal, contracting officer should obtain clarification from evaluator as to whether higher numerical score was intended for protester's revised proposal and, if error was made, selection authority should reconsider whether the difference perceived in technical quality as represented by the corrected higher score warrants award to protester.

AGC 0076
Informatics, Inc. (Informatics) protests the award of a contract to Computer Data Systems, Inc. (CDSI) by the National Institute on Alcohol Abuse and Alcoholism (Institute), Alcohol, Drug Abuse, and Mental Health Administration (Administration), Department of Health, Education and Welfare (HEW) under request for proposals (RFP) No. NIA-79-0014.

BACKGROUND

Award was made to CDSI on April 23, 1979. Following a debriefing on April 25, Informatics filed a protest with our Office and on April 30 filed suit in the U.S. District Court for the District of Columbia, Civil Action No. 79-1192, requesting a temporary restraining order enjoining HEW from proceeding with performance on the contract. By stipulation filed on May 2, HEW agreed to have performance withheld pending resolution of the matter.

The RFP solicited offers on a cost-plus-fixed-fee basis for managing the National Alcohol Program Information System (Information System), with the contractor responsible for all program staff training, data collection and editing, system programming, data processing and output report generation of all information received from approximately 450 HEW alcoholism treatment organizations in the United States and 50 state alcoholism programs.

While cost was to be a factor in selecting the contractor, technical quality was to be the primary consideration. The agency concluded that both Informatics and CDSI were technically equal, even though the former received an average technical score which was .67 of a point higher, and awarded the contract to CDSI because of its lower cost proposal.

BASES FOR PROTEST

Informatics maintains that 1) the Institute erroneously failed to evaluate transition or contractor phase-in costs in its cost realism analysis; 2) the technical review committee, in evaluating the proposal of each offeror, did not treat each evaluation subfactor as equal and 3) the technical review committee failed to evaluate proposal changes in best and final offers and the contracting officer failed to consider all relevant information in selecting CDSI.

DECISION

Although we find no merit to the protest allegations and find no need for a further technical evaluation of proposals or a re-analysis of cost realism, the record suggests that the average score given Informatics for its revised technical proposal may be erroneous. Consequently, we are recommending that HEW ascertain whether this apparent error in fact occurred. If it did, we further recommend that the selection authority reconsider the award decision on the basis of the correct scoring.

TIMELINESS OF PROTEST

HEW and CDSI assert that some of the bases of Informatics' protest were untimely raised at GAO. It is our policy, however, to consider issues that are untimely raised when a court expresses interest in our decision. National Ambulance Service of Louisiana, Inc., B-193447, January 22, 1979, 79-1 CPD 40.

TRANSITION COSTS

Informatics argues that the agency should have added \$100,000 in evaluating CDSI's proposed costs, because the Government will incur that expense in changing contractors should award be made to any firm other than Informatics, the incumbent contractor. Informatics argues that the solicitation provided for the evaluation of phase-in or change-over costs, and that our cases such as B.B. Saxon Co., Inc., 57 Comp. Gen. 501 (1978), 78-1 CPD 410 and Federal CSS, B-190708, January 24, 1979, 79-1 CPD 46 recognize the cost of changing contractors as a legitimate evaluation factor, even though this factor may penalize every offeror except the incumbent. Informatics points out that an assessment of such costs to CDSI would make Informatics the low offeror, because the difference in the final negotiated costs between Informatics and CDSI for one year is approximately \$21,000.

The Institute does not agree that the RFP provides for evaluation of phase-in costs. It points out that it initially considered imposing an evaluation factor for contractor change-over on all proposals other than the incumbent's, but concluded that this would give an undesirable competitive advantage to the incumbent contractor.

We have recognized that an agency appropriately may consider contractor change-over costs as an evaluation factor where the amount of that factor accurately depicts the Government's costs, although there is no requirement that an evaluation scheme include consideration of phase-in costs. EG&G Incorporated, B-182566, April 10, 1975, 75-1 CPD 221. Consideration of such costs may be either undesirable because they are highly speculative or because of the impact such an evaluation would have on competition. B-167249, January 19, 1970; B-164165 August 13, 1968. In this regard, an agency properly may be concerned, in the context of a given procurement, that evaluation of phase-in costs may lock in an incumbent contractor or may provide little incentive for the incumbent to offer the most competitive price. Consequently, while a contracting agency may validly structure

a procurement so that phase-in is considered in proposal evaluation, the matter is discretionary, even where it is a cost reimbursement contract that is to be awarded. See Rockwell International Corporation, 56 Comp. Gen. 905 (1977), 77-2 CPD 119. The general rule is that if such costs are to be evaluated, the solicitation must specify that they will be considered as an evaluation factor. Computer Data Systems, Inc., B-187892, June 2, 1977, 77-1 CPD 384; EG&G Incorporated, supra.

Here, the RFP stated the following:

"PHASE-IN OR TRANSITION PERIOD

Offeror is required to submit a plan to guarantee undiminished service during the period of transition from the incumbent contractor to the new contractor. Such plan should indicate where any problems are foreseen in transition and the most economical solution."

Contrary to Informatics' interpretation of that language, we believe the provision plainly conveys to offerors the necessity for submitting a technically and economically sound phase-in plan, not, as the protester contends, that the costs of phasing in a new contractor would be evaluated to the competitive advantage of the incumbent. Cf., Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404. Thus, we do not agree that this RFP advised offerors that the cost evaluation would include phase-in costs.

WEIGHT GIVEN EVALUATION SUBFACTORS

The protester believes that the subfactors listed under the four major technical evaluation criteria were not given equal weight during technical evaluation. Upon reviewing the evaluators' score sheets for its proposal the protester states that "there is absolutely no indication that the evaluators did not place greater emphasis on one 'subfactor' than another * * * since * * * the subfactors * * * were merely lumped on the evaluation sheet for each evaluator." Moreover, the protester argues that not all subfactors listed in the solicitation

were carried over onto the preprinted evaluation worksheets which were provided the technical evaluation committee, suggesting that the omitted subfactors were not considered by the evaluators.

The solicitation stated four major evaluation criteria with assigned weights, as follows:

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| 1. Understanding Project | 30 pts. |
| 2. Prior Staff Experience | 25 pts. |
| 3. Corporate Experience | 20 pts. |
| 4. Facilities | 25 pts. |

Under each evaluation criterion, various subfactors were listed without further indication of their relative weights. For example, under the criterion "Understanding Project" the following considerations were listed: system operation, system management, extent and scope, uses of information system format and content, and reporting system. The agency states that these subfactors were intended to be descriptive phrases to give both offerors and evaluators a better understanding of each weighted major criterion.

Although the parties disagree about whether the listed subfactors do more than merely define the major criterion and whether relative weights should have been disclosed, we believe the more basic consideration is whether the evaluation method utilized should have been anticipated by the offerors. Clearly, if any of the subfactors in this case were to be evaluated as significantly more important than another subfactor within the same major criterion, that fact should have been stated in the solicitation. However, weights need not be explicitly assigned to subcriteria which are to be considered of approximately equal importance and we think offerors should have assumed that would be the case here. Tracor, Inc., 56 Comp. Gen. 62 (1976), 76-2 CPD 386.

The protester has not convinced us that unequal weight in fact was given to any subfactor or that the failure to carry over all subfactors onto the printed score sheets used by the evaluators resulted in a failure to consider a listed subfactor. We are aware of no

requirement that evaluators affirmatively indicate on their score sheets that they have given equal weight to subfactors and, therefore, we do not attach any significance to the fact that the subfactors "were merely lumped on the evaluation sheet for each evaluator."

While all subfactors were not shown on the pre-printed proposal evaluation work sheets, the evaluators were provided separate written instructions which listed all of the major evaluation criteria and their subfactors and were instructed to review all of the solicitation's evaluation criteria. Moreover, our review of the completed evaluation worksheets clearly shows that some factors which did not appear thereon in preprinted form were considered. For example, there was discussion of "reporting," an omitted subfactor under the first criterion "Understanding Project," and of "Training," which was omitted from the third criterion, "Corporate Experience." The discussion of these subfactors was in the context of the relevant major criterion. In addition, it is clear to us that the evaluators considered the "extent and scope" of the offerors' understanding of the project even though the preprinted worksheets omitted "extent and scope" from that major criterion. Although we can find no specific reference to the two additional subfactors omitted from the preprinted worksheets, we note that the evaluators did not consider it necessary to expressly refer to all subfactors irrespective of its appearance on the preprinted worksheets. We find, therefore, that this record does not establish that the evaluators considered any of the subfactors to be more or less important than any other subfactor.

SUFFICIENCY OF TECHNICAL EVALUATION

The protester contends that the evaluation of the proposals' technical merits was defective because no consideration was given to site visit reports which questioned the adequacy of CDSI's facility or to Informatics' best and final offer.

The record shows that a site visit was made to Informatics and CDSI facilities on February 23, 1979, after the technical review committee had met. Those

making the visit included the project officer and the assistant project officer, the chairman of the technical review committee and the Institute's contract specialist. The project officer memorialized the visit by a memorandum dated February 27, 1979, addressed to "The Record." This memorandum, as well as another memorandum prepared by the assistant project officer on April 10, are critical of CDSI's existing facilities and both indicate that Informatics' facilities are considered suitable. Both memoranda also question the adequacy of CDSI's technical proposal, such as the number of labor hours proposed for certain tasks. We note that the latter comments relate to matters which go beyond the information garnered from a site visit. The contract specialist, who was the contracting officer's representative and who attended the site visitation, reported, on the other hand, that no significant findings had been developed.

We note that the Administration's internal procedures prohibit the project officer or alternate (assistant) from serving as a member of a proposal review group for that project and it would appear that the contracting officer should not have taken into account the judgment of these individuals regarding the adequacy of CDSI's proposal. In addition, it appears that the project officer and his assistant did not take into account CDSI's ability to arrange for additional facilities, if needed and as proposed by CDSI, but merely considered the adequacy of the firm's existing facilities. Accordingly, we disagree with the protester concerning the significance it attaches to these memoranda and we do not question the validity of the technical evaluation conducted without the benefit of these site visit reports.

The protester argues that it should have received a higher technical evaluation score because its best and final offer committed it to provide a more modern approach to data entry than it previously offered.

Our review of the record shows that Informatics was downgraded upon evaluation of its initial technical proposal because the evaluators believed it should have

proposed the latest computer processing technology to improve the system. However, after negotiation it submitted a revised proposal offering a more modern data entry system as an option. It is clear that this option was evaluated by the technical review committee. The committee's executive secretary summarized the results of the evaluation in a memorandum dated March 13, 1979. This memorandum expressly mentions Informatics' optional updated system, stating that "the option of a data entry and editing capability via a minicomputer offering off-line data manipulation was introduced in supplementary materials submitted [by Informatics] after the oral presentation [negotiation]." The contracting officer argues that the technical reviewers did not consider the optional nature of, vis-a-vis a firm commitment for, the improved data entry system, as detracting from its technical merit. Moreover, our review of the scoring worksheets convinces us that the reviewers in fact considered and credited Informatics for its optional system offered in its revised proposal.

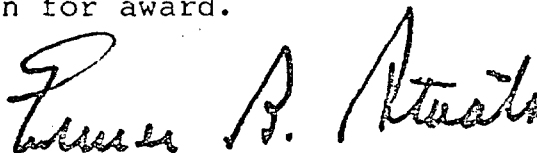
Accordingly, we conclude that there is no need for a further technical evaluation of the proposals.

ERROR IN PROTESTER'S TECHNICAL SCORE

However, our review has brought to light what may be a significant error in the computation of the average technical score for Informatics which could have impacted on the selection decision.

The record shows that the Administration computed Informatics' final technical rating (82.83, as opposed to 82.16 for CDSI) on the basis of a score of 85 points from one evaluator who the agency has identified to the protester as evaluator C. (Each evaluator completed a separate sheet for each initial proposal and one for each revised proposal.) We found that an evaluator C score sheet with the higher total score of 97.5 points was included among the score sheets for initial proposals. (Although this score sheet shows a corrected total score of 96, we note there is an arithmetical error in computing the weighted score for the second evaluation criterion and that the correct total on this

score sheet should be 97.5.) We further found that evaluator C did not date the Informatics score sheets and otherwise did not expressly identify thereon which proposal, initial or revised, was being evaluated. Our analysis of this evaluator's handwritten comments on the score sheets suggests that the evaluation sheet with the lower score of 85 points is more responsive to Informatics' initial proposal (it criticizes Informatics for being weak in keeping up with the latest technology in computer processing) than it is to the revised proposal. On the other hand, the score sheet with the much higher total score of 97.5 does not indicate any concern with the offeror's proposed method of computer processing and therefore appears to relate to Informatics' revised proposal which offered an optional upgraded data entry system. Thus, it appears that the two score sheets of this evaluator may have been mixed up, with the result that the final Informatics score should have been 84.91 points while CDSI's score would remain at 82.16 points, a difference of 2.75 points rather than .67, as evaluated by the Administration. Consequently, we recommend that HEW clarify this matter by determining which score sheet was in fact intended to apply to Informatics' revised proposal. If the higher score was intended to apply, then we further recommend that the selection authority reconsider whether the difference in technical scores warrants award to Informatics since technical quality was to be the primary consideration for award.



Comptroller General
of the United States