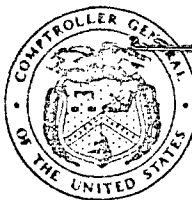


**DECISION**



13532 PLI  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-196499

**DATE:** April 23, 1980

**MATTER OF:** A. T. Kearney, Inc.

**DIGEST:**

1. Exclusion from competitive range is reasonable where proposal required substantial rewrite to conform to request for proposals because it fails to reflect understanding of purpose of procurement and offers to devote considerable effort to tasks not required by solicitation.
2. Allegation that evaluation criteria were unequally applied is not supported by assertion that protester's more detailed discussion of technical approach should have been rated higher than awardee's less comprehensive discussion where evaluation criteria did not require extensive detail and protester's discussion indicated intent to devote substantial effort to tasks not called for in solicitation.
3. There is no requirement to equalize the competitive advantage accruing to author of unsolicited proposal which underlies competitive procurement unless advantage results from preference or unfair action by Government.
4. Audits of cost-reimbursement contract provide safeguards against alleged conflict of interest resulting from conduct by awardee of related study, which allegedly could lead to payment by Government of costs attributable to church-sponsored study.

A. T. Kearney, Inc. (Kearney), protests the award of a cost-reimbursement contract by the Health Resources Administration (HRA) of the Department of Health, Education, and Welfare (HEW) to the Center for Applied Research in the Apostolate (CARA) for a study of Catholic hospitals. ✓

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[Protest Against Contract Award]

DLG 04466

We have decided that the protest provides no basis for corrective action.

The request for proposals (RFP) underlying this protest was issued on August 15, 1979, seeking offers for the conduct of a study on "The Role of the Catholic Health Care System in Implementing National Health Priorities" based on an earlier unsolicited proposal submitted by CARA. HRA received and evaluated three proposals. Of these, Kearney's was the lowest ranked, receiving a score of 43 out of 100; another offeror received a score of 59; CARA's score was 86. The contracting officer determined that CARA was the only offeror in the competitive range. After negotiations, the contract was awarded to CARA on September 26, 1979.

Kearney raises three broad objections to the award of the contract to CARA: (1) Kearney contends that its proposal was evaluated unfairly and not in accordance with the criteria of the RFP; (2) Kearney suggests that CARA had undue influence on the shaping of the procurement which resulted in an unfair competitive advantage; and (3) Kearney argues that the award was improper because CARA has a clear conflict of interest in carrying out the work. We will treat each of these objections in turn.

#### Unfair Evaluation

With regard to Kearney's contention that the proposal was unfairly evaluated, we note at the outset that it is neither our function nor practice to conduct a de novo review of technical proposals and make an independent determination of their acceptability or relative merit. Our review is limited to examining whether the agency's evaluation was fair and reasonable and consistent with the stated evaluation criteria. We will question contracting officials' assessments of the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations. E-Systems, Inc., B-191346, March 20, 1979, 79-1 CPD 192; INTASA, B-191877, November 15, 1978, 78-2 CPD 347; Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458.

Kearney has raised numerous objections on a section-by-section basis to HRA's evaluation of its proposal and has buttressed its arguments with its own comparative analysis of CARA's proposal. Rather than discuss each of Kearney's many allegations individually, however, we will confine our discussion to HRA's evaluation of the major shortcomings of Kearney's proposal which we view as sufficient justification for Kearney's exclusion from the competitive range.

The HRA substantially downgraded Kearney's proposal for a failure to reflect a clear understanding of the purposes of the procurement. In this regard, the HRA thought that Kearney's proposal failed to discuss potential contributions of the Catholic health care system to the health priorities of the health planning program or to identify opportunities or strategies for the promotion of constructive change within the Catholic health care system to enhance its contribution to the health care system. Kearney argues that these objectives were not discernible in the RFP. We think HRA was reasonable in its assessment of Kearney's view of the purpose of the procurement and that these criteria were properly applied.

The RFP required that proposals reflect a "complete understanding of the intent and requirements of the work involved" and demonstrate familiarity with the Catholic health system and "its inner network and interactions." The purpose of the contract, as explained in the RFP, was to provide HRA with case studies and analyses identifying the unique characteristics and the particular contributions of the Catholic health care system to the national health care delivery system and how these contributions might be maximized through the facilitation of constructive change. As stated in the RFP:

"By highlighting current and planned characteristics and activities that promote constructive change, the study could significantly facilitate and extend desirable modifications in the health care system."

After a careful reading, we agree with the HRA's assessment that Kearney's proposed effort is not directed to the objectives of the procurement. We believe the overall direction of Kearney's proposal is reflected in such statements as:

"\* \* \* it is important that HEW study the current situation in order to read the signs and trends and understand the reasons.";

"The Kearney technical approach is designed to analyze the past, current and future status of the Catholic health care 'system' through an analysis of certain critical or key issues."; and

"\* \* \* we shall be seeking to identify those issues inherent in the Catholic health care system which have the greatest likelihood of having an impact on the national health care system."

Kearney's proposal appears to have as its objective the identification of problems within the Catholic health care system and the projection of their impact on the national health care system. We consider reasonable HRA's assessment that this falls short of the goal of this procurement of identifying those peculiarities of the Catholic health care system which could facilitate problem solving to enhance the Catholic health system's contribution to the achievement of national health priorities.

The HRA's view of Kearney's proposed technical approach compounded HRA's negative assessment of Kearney's proposal. The RFP spelled out the four approaches to be used to accomplish the procurement's research objectives:

- "a. A literature review,
- "b. Analysis of statistical data available from U.S. Government publications, directories and other relevant sources,

"c. case studies, and

"d. workshops of common interest groups \* \* \*."

Kearney proposed to devote considerable effort to the development, use and analysis of a mail survey, including obtaining approval for its questionnaire from the Office of Management and Budget (OMB), and also proposed to use the workshops to disseminate the results of its findings. The HRA believed that this approach did not reflect a clear understanding of the RFP's research requirements and noted in addition that Kearney's inclusion of tasks not required by the RFP resulted in a maldistribution of effort in Kearney's management plan.

We believe HRA's assessment of Kearney's technical approach was reasonable. We think the RFP may fairly be summarized as emphasizing the analysis and interpretation of existing data available through secondary sources. We also think it clear that HRA intended the workshops to be research tools rather than a means of publication. Kearney's proposal would have required a substantial rewrite, in effect, the preparation of a new proposal, to meet these objectives.

Furthermore, we find no basis upon which we might conclude that HRA's evaluation of proposals was either unfair or inconsistent. Kearney relies particularly on a relative lack of detail in CARA's discussion of its technical approach, e.g., absence of a proposed bibliography for the literature search or a structure for the conduct of interviews, as evidence that the evaluation criteria were not evenly applied. Kearney suggests that its own more detailed discussion of its technical approach would have been rated higher had the criteria been evenly applied. We think Kearney's argument reflects an overestimation of the RFP's information requirements.

The RFP states that proposals will be evaluated under the criteria set out in the technical proposal instructions. The requirement in the instructions for a "full description" of the proposed technical approach is tempered by language describing the informational

requirement as "i.e., a conceptual framework for conducting the literature review and the analysis of the statistical data must be included along with the methods to be utilized." We do not think that this language calls for the degree of detail suggested by Kearney or that the comparison of relative detail is an appropriate measure of merit under these criteria. We think it clear that this portion of the evaluation stressed the conceptual framework of an offeror's proposed efforts and that the deficiencies noted above in Kearney's proposal influenced its technical approach, resulting in a distortion in Kearney's proposed line of effort that was not evident in CARA's proposal.

#### Exclusion from Competitive Range

The determination whether a proposal is in the competitive range is primarily a matter of administrative discretion which we will not disturb absent a clear showing that the determination is unreasonable. Electrospace Systems, Inc., 58 Comp. Gen. 415 (1979), 79-1 CPD 264; Donald N. Humphries & Associates, et al., 55 Comp. Gen. 432 (1975), 75-2 CPD 275. We will uphold such a determination even though it leaves only one offeror in the competitive range unless it involves a close question of proposal acceptability, the likelihood of significant cost savings, or easily corrected deficiencies. Audio Technical Services, Ltd., B-192155, April 2, 1979, 79-1 CPD 223; Dynalelectron Corporation, B-185027, September 22, 1976, 76-2 CPD 267; Comten-Compress, B-183379, June 30, 1975, 75-1 CPD 400. None of these questions is present here and we believe the record confirms that there was a reasonable basis for Kearney's exclusion from the competitive range. Consequently, we find no abuse of discretion in Kearney's elimination from the competition.

#### Competitive Advantage

Kearney asserts that CARA had an unfair competitive advantage because the RFP was based on CARA's earlier-submitted unsolicited proposal. We disagree.

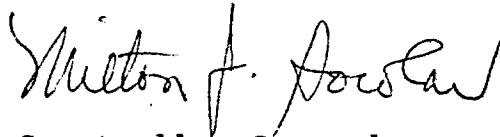
A party submitting an unsolicited proposal which later forms the basis for a competitive procurement stands essentially in the same competitive position

as an incumbent or a past contractor which might have a competitive edge over other offerors. There is no requirement to equalize this advantage unless it is the result of a preference or unfair action by the Government. ENSEC Service Corp., 55 Comp. Gen. 656 (1976), 76-1 CPD 34. We find no such preference or unfair action by the Government here.

Conflict of Interest

Kearney also argues that the award to CARA was improper because CARA has a "clear conflict of interest" arising from CARA's almost simultaneous conduct of a study on the role of the Catholic church in health care which could lead to the Government paying for a church-sponsored study. However, we agree with HEW that its audits of CARA's costs assigned to this contract should provide safeguards against the payment of expenses not associated with the contract.

The protest is denied.



Acting Comptroller General  
of the United States