

Crawley  
Pl. No. II #  
14698

**DECISION**



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

FILE: B-198410 DATE: August 25, 1980

MATTER OF: Comprehensive Health Services, Inc.

**DIGEST:**

1. Agency acted properly in awarding contract to higher-priced but higher-scored offeror since evaluation criteria indicated award would be made to offeror with highest total score.
2. Offeror was not prejudiced by late publication of Commerce Business Daily announcement of proposed procurement and such procedural deficiency does not affect validity of award.
3. Determination to set aside procurement for small business is within authority and discretion of contracting agency.

*Against.*

Comprehensive Health Services, Inc. (CHS) [protests the award of a fixed-price contract] to EHE National Health Services, Inc. (EHE) under request for proposals (RFP) No. BATF-80-8, issued by the Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury. The procurement was for the provision of occupational health services to approximately 2000 Federal employees.

As its basis for protest, CHS asserts that ATF did not follow the RFP's evaluation criteria in awarding the contract to EHE. In this connection, it points out that it submitted the lowest offer and that its technical proposal was of "comparable technical quality." It believes that CHS lost technical points as a result of its lack of experience and that this shows ATF was biased in favor of EHE, the incumbent contractor. In addition, CHS questions whether the solicitation was synopsisized in the Commerce Business Daily (CBD) to conform with the requirements

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of Federal Procurement Regulations 1-1.1003. CHS also argues that the solicitation should have been set aside for small business. We find no merit to the protest.

The RFP provided that each proposal would be evaluated as follows: (1) understanding and approach to the required work - 50 points; (2) offeror's managerial, corporate and personnel resources - 30 points; (3) cost or price - 20 points.

Thus, technical considerations (items 1 and 2) were the principal evaluation criteria, with cost having a secondary role. The RFP also specified that award would be made to the offeror with the highest total technical and cost evaluation points. Cost evaluation points were determined by assigning the maximum number of points (20) to the lowest-priced technically acceptable offer, with lesser points awarded to higher-priced offers pursuant to a formula specified in the RFP.

Our examination of the evaluation shows that even though the protester's proposal was well regarded, EHE's proposal was scored higher by each of the technical evaluators. Thus, EHE received a total of 78.8 "technical" points or about 98.4 percent of the total technical points available. On the other hand, CHS received 71.7 points for a technical score of 89.6 percent. Whatever minor advantage EHE may have had as a result of its experience does not render the evaluation unreasonable, since the Government is not required to ignore the relative advantage offered by one firm over another merely because that position resulted from prior contract awards. Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404. We point out that one of the specific evaluation subcriteria was the offeror's experience and past performance in comparable work. In this connection, we note that EHE's proposal clearly demonstrates far greater experience in providing these services than does that of the protester.

Our examination of the record also indicates that ATF scrupulously applied the announced evaluation criteria with respect to the evaluation of cost and technical considerations and the award of the contract. In

this respect CHS, as the lowest-priced offeror, received the maximum 20 point score for cost and thus achieved overall score of 91.7. EHE's cost score of 14.8, when added to its technical score, gave it a total of 93.6. We therefore have no reason to question the award since it was made in accordance with the announced evaluation criteria, and nothing in the technical evaluation indicates any impropriety.

We also note that CHS' assertion that the solicitation was not synopsisized in the CBD is in error. The announcement appeared, albeit late, in the March 4, 1980 CBD issue. In any event, since CHS had actual notice of the solicitation and did submit a proposal, we fail to see how it could have been prejudiced by the lack of such an announcement. In addition, procedural deficiencies, such as the one alleged, do not affect the validity of the award. Caedmon Division, The Raytheon Company, B-194030, August 21, 1979, 79-2 CPD 139.

Finally, whether a procurement should be set aside for small business is generally a decision within the authority and discretion of the contracting agency. In this respect, with one exception not relevant here (see section 221 of Pub. L. 95-507, providing for the setting aside of small purchases for small business concerns), there is nothing in either the Federal Procurement Regulations or the provisions of the Small Business Act (15 U.S.C. § 631 (1976)) which makes it mandatory that any particular procurement be a set-aside for small business. Patrician, B-194011, July 3, 1979, 79-2 CPD 3.

Accordingly, the protest is denied.

*Harry R. Van Clene*  
For the Comptroller General  
of the United States