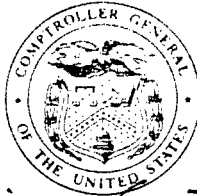


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DECISION



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

Protest Alleging Contract Award Had No Rational Basis

FILE: B-198117

DATE: January 6, 1981

MATTER OF: Bradford National Corporation

DIGEST:

1. Unsuccessful offeror's complaint that its proposal in response to grantee's request for proposals (RFP) was more advantageous than awardee's is not supported in record which demonstrates proposal was technically unacceptable because based on assumptions not permitted by RFP.
2. Grantee is not required by Federal "norm" to conduct discussions with offerors, particularly where a proposal has major technical deficiencies and may be reasonably viewed as unacceptable.
3. Failure of grantee's RFP to indicate relative weights of listed evaluation criteria does not warrant sustaining of complaint where complainant received benefit of actual weights applied and otherwise appears not to have been prejudiced by RFP omission.

Bradford National Corporation has asked us to review the award of a contract to The Computer Company (TCC) by the Commonwealth of Pennsylvania under a grant from the Department of Health and Human Services. Our review is undertaken pursuant to a Public Notice at 40 Fed. Reg. 42406, September 12, 1975, where we stated that we would consider complaints concerning contracts under Federal grants.

Bradford alleges that the award to TCC has no rational basis, and that the award selection process used by Pennsylvania violates both Federal and state law. Bradford also contends award should be made to it as the lowest responsible offeror. For the reasons set forth below, we are denying Bradford's complaint.

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The grant was awarded to Pennsylvania under Title XIX of the Social Security Act, 42 U.S.C. § 1396. The grant terms include Attachment O to Office of Management and Budget (OMB) Circular A-102. This Attachment provides, among other things, that grantees may use their own procurement regulations reflecting applicable state and local law, provided that procurements adhere to certain Federal standards.

The Pennsylvania Department of Public Welfare issued request for proposals (RFP) No. 52-79 asking for offers to provide services in support of a computerized Medical Assistance Management Information System (MAMIS) to process Medicaid claims. The RFP asked for technical and cost (firm prices per adjudicated claim line) proposals, and set forth the following "Criteria for Selection":

"All proposals received will be evaluated by a committee of qualified [Pennsylvania] personnel who will select the proposal which most closely meets the requirements of the RFP. The following will be considered in making the selection:

a. Understanding of the requirements. This refers to the bidder's understanding of the nature and scope of the work involved.

b. Bidder qualifications. This criteria includes the ability of the bidder to meet the terms of the RFP, as demonstrated by performance in providing similar services for other organizations and by the plan for delegating authority and assigning responsibility to the various levels of the proposed organizational structure.

c. Professional personnel. This refers to the competence of personnel who would be assigned to the job by the bidder. Qualifications of personnel will be measured primarily by experience, with particular reference to experience similar to that described in the RFP.

d. Soundness of approach. Emphasis here is on the plan for ensuring that equipment and personnel will be ready to provide the services described in this RFP by May 1, 1980.

e. Price. While this area will be weighted heavily, the low bid will not necessarily be accepted."

Bradford's first complaint is that Pennsylvania improperly downgraded Bradford's technical proposal with respect to experience, approach and staffing. (However, an examination of Bradford's proposal leads us to conclude that Pennsylvania's evaluation was reasonable.

The record indicates that Pennsylvania considered the success of its Medicaid program dependent on widespread participation by doctors, dentists and the other providers of medical services. Pennsylvania also believed it was important that the claims processing system called for in the RFP encourage provider participation. Thus, the RFP indicated generally that claims containing errors should be processed in a "pending" claims unit, rather than be automatically rejected. The contractor was then to "resolve" the "pended" claim where possible under procedures furnished by Pennsylvania. The RFP estimated that 20 to 30 percent of the invoices processed daily would "pend".

Bradford, as noted above, contends its technical proposal was improperly downgraded. Bradford's technical proposal ranked fourth with a score of 418; TCC had the highest technical score at 571.

Pennsylvania states that Bradford had major flaws in its proposal. In this regard, Pennsylvania's evaluation of Bradford's proposal is:

"Bradford's Medicaid experience is limited to New York. They assumed that Pennsylvania has a Medicaid atmosphere similar to that in New York where the legislature strongly supports the MAMIS and backs the state in all controversies with providers. Based on that assumption, Bradford recommended that as many errors as possible be rejected directly to the provider rather than

resolved by a pended claims unit. (This is reflected by the extremely low number of personnel proposed for pended claims * * *). This is an unrealistic expectation in Pennsylvania where provider fees are extremely low and providers have more of an impact on the legislature than vice versa.

"They [Bradford] do not appear to want to accept MAMIS as Pennsylvania defines it. They discuss doing an analysis of edits and altering them. The staffing estimates for the entire project are totally unrealistic; this reflects a meager understanding of the complexities and scope of such a system.

"Particularly poor was their understanding of the requirements. The proposal reflects minimum qualifications and a limited approach to implementing and operating a claims entry and resolution system for MAMIS. The training plan was not outlined in detail to include courses, audience content, etc. Bradford scored very poorly on invoice editing which is a key part of the system. Prior authorization is not addressed.

"The proposed program manager is currently pend resolution manager in New York. There is no evidence he can pull together and organize an entire process such as this."

Bradford disagrees. It contends that it has relevant experience in performing a MAMIS for the State of New York and that the Pennsylvania contract is directly comparable to the New York situation. In this connection, Bradford alleges that its proposal was misread by Pennsylvania and that Bradford's approach of rejecting as many claims as possible, instead of resolving them in a pended claims unit, was only an alternative suggestion misconstrued by Pennsylvania as a mandatory part of Bradford's proposal. Bradford states that its proposal was unfairly penalized on account of Pennsylvania's misconception, and that the Commonwealth should have sought clarification rather than reject the proposal.

With respect to staffing levels, Bradford contends its staffing was sufficient and based on the RFP requirements and its experience in New York. Further, Bradford contends it can perform the work with a relatively small staff since it "employs only highly skilled and motivated individuals, with resultant high productivity levels." In any event, Bradford thinks this matter, too, should have been a subject for discussions.

As we read Bradford's proposal, Bradford has not proposed a system compatible with the RFP's requirements. The RFP advised offerors of the critical requirement of resolving as many errors as possible in a pending claims unit. Bradford's proposal, on the other hand, including the price proposed, clearly stated that it was based on a number of "assumptions." Bradford assumed that:

"[Pennsylvania] will give due consideration to Bradford suggestions to automatically reject, rather than pend, selected edit errors when it can be demonstrated that almost all such claim errors are attributable to providers rather than to Bradford key entry."

By making this assumption, Bradford offered services substantially different than that required by the RFP. Rather than offering a comprehensive system for resolving pending claims, Bradford proposed to return a significant number of such claims to the providers.

Further, we cannot agree, as Bradford maintains, that it was only offering this "suggestion" as an alternative proposal. On the contrary, Bradford's price proposal was tied to this assumption, and no other proposal was offered by the firm. In addition, while Bradford proposed a pend resolution staff of 17, the awardee proposed a staff of 69, approximating the grantee's estimate of its requirement. Also, we do not read Bradford's fixed-price proposal to include additional staff as needed without a price increase, as Bradford contends, nor can we agree with Bradford that Pennsylvania should have considered its relatively small staff adequate because of its exceptionally high motivation.

With respect to the experience factor, Pennsylvania's determination that Bradford's proposed management needed additional experience is not arbitrary. While Bradford's contract for the New York MAMIS is much larger than the Pennsylvania program, New York's approach, as stated above, for a MAMIS is substantially different than Pennsylvania's and Bradford's experience appears limited to that approach.

Bradford's other allegation is that award should have been made to it by virtue of Pennsylvania law and that Pennsylvania's failure to conduct negotiations violates the Federal norm. The gravamen of Bradford's argument with respect to Pennsylvania law is that it requires award to the lowest responsible bidder. Inasmuch as Bradford submitted the lowest offer and is responsible, the complainant thinks award should have been made to it. In support of its position, Bradford quotes the following statement from a decision of the Commonwealth Court of Pennsylvania:

"[E]ven in the absence of a constitutional or statutory requirement that a contract be awarded to the lowest responsible bidder, if in fact the public authority invites bids, public policy and the economical conduct of governmental business require that the contract be awarded to the lowest responsible bidder."

American Totalisator v. Seligman, 367 A.2d 756, 758 (Pa. Commonw. Ct. 1976).

We do not read Pennsylvania law to require award to Bradford. What Pennsylvania law requires is that all offerors be given the same information and treatment so that each has the same opportunity to receive a contract award, and that low price is controlling where other considerations produce a tie or where the solicitation expressly makes it controlling. See American Totalisator v. Seligman, 414 A.2d 1037 (Pa. 1980); Hibbs v. Arensberg, 119 A.2d 727 (Pa. 1923). Thus, the fact that Bradford proposed the lowest price is not significant; no Pennsylvania case has been cited which would require the Commonwealth to make an award based on price where the offeror has indicated that it will not meet the solicitation requirements.

With respect to the Federal "norm", we point out that when, as here, a procurement is not being conducted by the Federal Government, the rules applicable to Federal procurements do not apply and only "fundamental" principles must be followed. Copeland Systems, Inc., 55 Comp. Gen. 390 (1975), 75-2 CPD 237. In this regard, we have recognized the viability of procurement approaches which differ from those mandated for use by Federal agencies by the Federal Procurement Regulations (FPR). See, e.g., General Electric Company, 54 Comp. Gen. 791 (1975), 75-1 CPD 176 (involving the use of a procurement method combining aspects of both formal advertising and negotiation). Of course, fundamental fairness, and thus the Federal "norm", require that when one offeror is permitted to compete on the basis of a particular approach or to revise a proposal, other offerors be given the same opportunity. Cohu, Inc., 57 Comp. Gen. 759 (1978), 78-2 CPD 175. However, there is no fundamental requirement that in every case a grantee permit offerors to revise their proposals, and neither the current Attachment O nor the predecessor version which is applicable to this procurement otherwise imposes such a requirement. Even FPR provisions permit agencies to make award on the basis of proposals as initially submitted, see FPR 1-3.805-1, and, should discussions be conducted, to limit them to those offerors whose proposals have a reasonable chance of being selected for award, i.e., are in a competitive range. See FPR 1-3.805-1; Century Brass Products, Inc., B-190313, April 17, 1978, 78-1 CPD 291.

Here it seems reasonable, given the evaluation of the complainant's proposal, that under Federal procurement rules the complainant could reasonably have been excluded from the competitive range. We thus see no merit to this aspect of the complaint.

Finally, Bradford complains that the RFP listed the evaluation criteria, but did not disclose the relative weights of each factor. We believe the solicitation should have done so and in fact the current Attachment O requires that RFPs identify all significant evaluation factors and their relative importance. However, we are not disposed to sustain the complaint on this basis. First, Bradford did not complain about this RFP defect prior to the date for submitting proposals. Secondly, we do not believe Bradford

was in any way prejudiced since: 1) in the evaluation, price was the single most heavily weighted factor and Bradford, having submitted the lowest price, received the benefit of that weighted evaluation approach, and 2) the deficiencies in Bradford's proposal are unrelated to the weighting scheme used in the evaluation and it appears likely that its technical proposal would have been no different had the RFP identified the relative weights of the factors.

The complaint is denied. .

A handwritten signature in dark ink, appearing to read "Milton J. Fowler". The signature is written in a cursive, flowing style with some loops and flourishes.

For the Comptroller General
of the United States