

18182

DECISION



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

FILE: B-201725

DATE: May 20, 1981

MATTER OF: Comprehensive Health Services, Inc.

[Protest of NASA Contract Award]
DIGEST:

1. Protest that RFP's qualifications for medical director were unduly restrictive of competition, filed after closing date for receipt of initial proposals, is untimely under GAO Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1980). Whether requirements are unduly restrictive, i.e., whether they are reasonable and necessary for purpose intended, would be apparent from face of RFP and is not dependent on field of competition.
2. Untimely protest will not be considered under significant issue exception to timeliness rules because matter appears to concern this procurement and is not of widespread interest.
3. Where RFP warns that key personnel must meet certain minimum requirements and that failure to do so would render proposal unacceptable, agency reasonably determined proposal was technically unacceptable where proposed key personnel did not meet certain minimum requirements.

Comprehensive Health Services, Inc. (Comprehensive) protests NASA's proposed award of a contract to Compton Associates under request for proposals RFP W-10-22486/HWE-2. The contract, a 100 percent small business set-aside, is for the operation of the employee health program for NASA Headquarters, including the employee health clinic and physical

~~0:986~~ 115290

fitness facility. Compton Associates was recently formed for the purpose of competing for this procurement by Dr. Compton, the medical director at NASA Headquarters under contract to the incumbent contractor, a large business.

Comprehensive contends that (1) the RFP's qualifications for medical director are unduly restrictive because they are drawn around the qualifications of Dr. Compton and (2) NASA's determination that its revised proposal was technically unacceptable was arbitrary and capricious.

We dismiss the first ground of protest as untimely filed and deny the second basis for protest.

Comprehensive's protest was not filed (received) in our Office until January 8, 1981, well after the due date for receipt of initial proposals of September 8, 1980. Our Bid Protest Procedures require that a protest based on alleged solicitation improprieties, which are apparent prior to the closing date for receipt of initial proposals, must be filed prior to that closing date. 4 C.F.R. § 20.2(b) (1) (1980). Therefore, a protest alleging that the RFP's specifications are unduly restrictive because they favor one individual or firm must be filed before the closing date for receipt of initial proposals. Clark & Lewis, Inc., B-196954, January 8, 1980, 80-1 CPD 24.

The protester argues, however, that its protest is not untimely. Comprehensive admits that an examination of the RFP's requirements for medical director "might lead an offeror to conclude that these were restrictive." Instead of protesting before the closing date for receipt of initial proposals, however, Comprehensive states that it chose to participate in this procurement, hoping that it could meet these "seemingly unnecessary requirements." Comprehensive asserts that it wasn't possible to know that the requirements favored the incumbent medical director until Comprehensive received NASA's notice that its proposal was technically unacceptable. Comprehensive states that only at this time could it ascertain whether the RFP's qualifications for medical director were designed to retain the incumbent or whether they were designed simply to improve the program. The protester also asserts that since it

did not learn that Dr. Compton had submitted a proposal until its receipt in March of NASA's report on the protest, its protest in January was, if anything, premature.

We disagree. Regardless of the identity of any particular offeror on the procurement, Comprehensive should have been aware of the allegedly restrictive nature of the RFP's qualifications for medical director after its receipt of the RFP. In other words, without regard to the possible field of competition, Comprehensive should have known whether these qualifications were reasonable and necessary for a NASA Headquarter medical director or whether they were unduly restrictive. NASA's notice to the protester that its proposal was technically unacceptable only stated that Comprehensive had not met certain of the qualifications for medical director; it added no new information to that which already was apparent from the RFP. The notice only confirmed what Comprehensive already suspected when it received the RFP, that it may not have been able to meet the requirements for medical director. Comprehensive admits as much when it states that it thought the requirements were restrictive but decided to try to meet these "seemingly unnecessary requirements." In addition, Comprehensive was aware that Dr. Compton currently worked at NASA as the medical director and that some of the RFP's minimum qualifications for medical director "reflected capabilities of Dr. Compton." Thus, we conclude that the protester had sufficient information to protest before the closing date instead of waiting until after NASA rejected its proposal and that its protest on this issue is untimely.

Comprehensive argues that we should review its allegations under the significant issue provision of our Procedures, 4 C.F.R. 20.2(c), because this case is an example of a situation where the Government writes restrictive specifications around the incumbent's key personnel to permit the key personnel to form a small business to compete for the set-aside procurement.

We do not consider the alleged solicitation improprieties raised by Comprehensive to be "significant" within the meaning of section 20.2(c). The significant

issue exception is limited to issues of widespread interest to the procurement community and is exercised sparingly so that the timeliness standards do not become meaningless. McCaleb Associates, Inc., B-197209, September 2, 1980, 80-2 CPD 163.

Despite the gloss the protester puts on them, Comprehensive's allegations merely concern the specifications of this one procurement and, therefore, are not of sufficient impact to warrant our review under the significant issue exception. See Ronald Campbell Company--Reconsideration, B-195919.2, November 29, 1979, 79-2 CPD 382.

Comprehensive's contention that NASA arbitrarily rejected its proposal as technically unacceptable is premised upon its belief that the RFP's requirements for medical director were tailored around the qualifications of Dr. Compton. The protester maintains that since no other offeror could meet these requirements, NASA's rejection of its proposal based on any deficiencies concerning its proposed medical director, is not rationally founded.

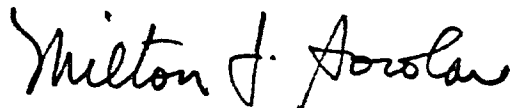
It is true that a fundamental weakness of Comprehensive's proposal concerned its proposed medical director, who did not meet all of the specified mandatory requirements. In addition, however, the record shows that the proposal was viewed as containing other significant weaknesses as well.

For example, in the key personnel category, several individuals were found to be lacking some of the minimum qualifications set forth in the RFP: the chief nurse and assistant chief nurse were not D.C. licensed, and the medical administrative assistant lacked 1/2 year of the required 3 years experience in "medical administration and/or secretary in occupational medical facility, hospital * * *." In the "other personnel" category, Comprehensive's physical fitness facility attendant and technician did not meet the minimum RFP requirement for experience in maintaining electronic equipment; Comprehensive also did not propose an individual radiologist.

Comprehensive's only response to these deficiencies is that its weakness regarding the nurses "mainly relate to the proforma licensing of nurses" and that its proposal named three consulting radiologists.

On this record, we cannot say that NASA's rejection of Comprehensive's proposal was arbitrary. The RFP clearly warned that a proposal would be unacceptable if key personnel did not possess the minimum specified qualifications, yet Comprehensive proposed individuals who did not meet those requirements. Moreover, the evaluation record shows that in every non-personnel category, such as understanding the scope of work, Compton Associates outscored Comprehensive. Our review indicates that the evaluators did have a reasonable basis for this conclusion. While the protester does not argue with those conclusions, they are within the discretion of the contracting agency and since they appear to have a reasonable basis, are not subject to legal objection. See Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458.

The protest is denied.



Acting Comptroller General
of the United States