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**DECISION**



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

**FILE: E-203338.2**

**DATE: September 24, 1982**

**MATTER OF: Mutual of Omaha Insurance Company**

**DIGEST:**

1. Contentions that protester has failed to distinguish from bases of protest denied by GAO in decision on related procurement, which used identical request for proposals and evaluation scheme, are denied for the same reasons expressed in previous GAO decision.
2. Protest that agency improperly awarded "bonus points" for features exceeding minimum requirements is without merit where technical factors are an important part of the competition and higher technical evaluation score accorded awardee's data processing system reflects nothing more than agency's reasonable assessment that awardee's system, with greater flexibility and capability for modification, offered superior ability to meet functional requirements in request for proposals. Offerors are, or should be, on notice that such qualitative distinctions will be made when technical factors are part of the competition. Moreover, agency was not obligated to point out inferiority of protester's system during discussions where that inferiority was due to protester's own lack of ingenuity and inventiveness in design of system.
3. Allegation that awardee was given extra credit in technical evaluation for "desire" and other extraneous factors, based on remarks by agency personnel during debriefing, is unsubstantiated. Our own in camera review of scoresheets

shows that evaluation was generally fair and reasonable and in accord with the solicitation.

4. Record does not support allegation that Government and awardee engaged in improper discussions regarding the interpretation of the solicitation or preparation of proposals which operated to the detriment of other offerors.

Mutual of Omaha Insurance Company (Mutual) protests the award of a contract to Blue Cross and Blue Shield of South Carolina (South Carolina) by the Office of Civilian Health and Medical Programs of the Uniform Services (CHAMPUS) under request for proposals (RFP) No. MDA906-80-R-0007. Mutual challenges CHAMPUS's evaluation of proposals, CHAMPUS's selection of technical evaluation personnel, and contends that CHAMPUS and South Carolina engaged in improper communications regarding the solicitation and the preparation of proposals. We find Mutual's protest to be without merit.

This procurement, covering the States of Pennsylvania, Delaware, Maryland, North and South Carolina, Virginia, and the District of Columbia, identified as the Mid-Atlantic Region, was the second in a series designed to consolidate CHAMPUS contracts for fiscal intermediary services into multi-State regions. These contracts cover the administration and handling of claims for health benefits provided under CHAMPUS auspices to military dependents, retirees, and other authorized recipients. The first contract, combining several States into the South Central Region, was awarded to Wisconsin Physicians Service Insurance Corporation in December 1980 and was also the subject of a protest by Mutual. Mutual of Omaha Insurance Company, B-201710, January 4, 1982, 82-1 CPD 2 (Mutual I). Both that procurement and this one were conducted using the same (except for regional identification) RFP package and following the same evaluation scheme. The RFP's provided that technical considerations were significantly more important than price and identified the principal technical factors in order of importance as Claims Processing, General Administration, and Corporate Experience/Performance, with experience the significant factor. Evaluation of the Claims Processing

and General Administration factors was to focus on the ability of the proposed system to handle the work described in the RFP; the Corporate Experience/Performance factor emphasized the offeror's demonstrated qualifications based on prior CHAMPUS, Medicare or other Government health program experience, or similar private sector experience.

Mutual was the lowest ranked offeror technically and Mutual's price was substantially higher than South Carolina's. The contract was awarded to South Carolina on April 16, 1981.

Mutual's protest was filed following CHAMPUS's debriefing of Mutual on May 12, 1981. This procurement has also been the subject of another protest. Pennsylvania Blue Shield, B-203338, March 23, 1982, 82-1 CPD 272.

#### Issues Decided in Mutual I

Mutual raises three grounds of protest that are identical to bases which Mutual raised in Mutual I. They are: (1) the technical evaluation failed to give significant weight to performance history because CHAMPUS considered experience as a separate factor rather than as an integral part of the evaluation of each of the other evaluation factors as required by the RFP; (2) price quotations were not evaluated in accordance with the terms of the RFP because CHAMPUS based its evaluation on an estimated claims quantity rather than the maximum quantities specified in the solicitation; and (3) the qualifications of CHAMPUS's technical evaluators were suspect. Mutual has provided no basis upon which we might distinguish these present bases of protest from those already considered and denied in Mutual I. Consequently, these contentions are governed by that decision.

As an initial matter, we point out that CHAMPUS contends that these three grounds of protest are untimely because Mutual should have known that the evaluation in this procurement would be the same as that for the South Central Region and should have raised them in the present case either at Mutual's debriefing on the South Central Region procurement or within 10 working days of the award to South Carolina. See 4 C.F.R. § 20.2(b) (1982). Mutual disagrees.

We see no need to resolve the timeliness of these bases of protest since, if timely, the decision in Mutual I is

dispositive. As we noted above, Mutual has provided no basis upon which we might distinguish these allegations from those considered in Mutual I and we have found none. We will summarize that decision, equally applicable here, only briefly with respect to each of these contentions.

1. In Mutual I we agreed with Mutual that the solicitation could be read as Mutual contended--that is, that the RFP might require CHAMPUS to evaluate performance history as an integral part of each of the other evaluation factors rather than as a separate factor--but that it made no difference. As we stated in Mutual I:

\* \* \* \* Whether experience is considered to be, for instance, 30 percent of the possible total technical score or is considered to be 30 percent of the possible total scores for each of the individual elements matters not at all, it is still given a 30-percent weight in the evaluation. \* \* \* \* Mutual I, p. 9.

We also noted that if it were Mutual's position that experience should have been evaluated both independently and as an integral part of the other factors, this would have inflated the importance of experience beyond its position as the least important criterion to the extent that it would have conflicted with the announced evaluation scheme. We also considered it permissible for CHAMPUS to have different teams evaluate different parts of the proposal.

We did recommend, however, that CHAMPUS modify the solicitation to clarify the independence of experience as an evaluation factor. CHAMPUS advised us informally that this would be done in future procurements.

2. The RFP required offerors to state their per-claim price for each of three ranges of claim quantities for each of 3 years with a guaranteed minimum and maximum quantity for each year. In Mutual I, we agreed with Mutual that the RFP's description of the price evaluation was ambiguous concerning whether prices were to be evaluated on the basis of the maximum quantity or on a mid-range estimate of the projected quantity of claims based on historical data

provided to the offerors. We declined, however, to consider the question further because even if CHAMPUS evaluated prices as Mutual advocated, Mutual's price would still have been substantially higher than that of the successful offeror. The same is true here.

We note that we did recommend that CHAMPUS clarify this provision in future solicitations. As with the preceding recommendation, we were informally advised that CHAMPUS will do so.

3. In Mutual I, we denied Mutual's challenge to the qualifications of CHAMPUS's evaluators because of the lack of evidence to support Mutual's conjectures. We do so again here.

#### Improper Evaluation

CHAMPUS indicates that a margin of points was available under each evaluation factor to distinguish between technically superior and marginal proposals. Mutual describes this scoring technique as the awarding of "bonus points" for features that exceed the RFP's minimum requirements.

Mutual protests that the RFP does not specifically state that "bonus points" were to be awarded and argues that "bonus points" cannot be awarded unless the RFP specifically states that added points will be awarded for desirable features. In the absence of such a notice, Mutual argues, all offerors who meet the solicitation's minimum requirements are entitled to the maximum number of possible points.

We disagree. Initially, we note that Mutual's use of the phrase "awarding bonus points" is misleading insofar as the process it describes was little more than CHAMPUS's differentiation among proposals according to their technical merit. As we noted in Mutual I, we have previously approved of this type of discrimination among proposals where technical factors form an important part of the competition, as they did here. See Amdahl Corporation, B-198911.2, March 27, 1981, 81-1 CPD 231. Furthermore, we think that offerors are on notice, as Mutual should have been here, that qualitative distinctions will be made among

proposals where technical factors are part of the competitive evaluation, as was clearly the case in this procurement. Mutual's position would deny the means to differentiate among proposals on the basis of technical merit. We find this contention to be without merit.

Mutual also contends that CHAMPUS awarded South Carolina additional points for features which CHAMPUS failed to disclose in the RFP or during discussions. Mutual cites two specific instances in which South Carolina was awarded added points for undisclosed features: (1) points awarded for offering a parameter-driven automatic data processing (ADP) system; and (2) points awarded on the basis of South Carolina's "desire" for the contract. In addition to these specific allegations, Mutual asserts that our examination of the scoresheets will reveal that points were awarded on the basis of other undisclosed features. We will examine these questions in turn.

South Carolina proposed a parameter-driven ADP system which CHAMPUS evaluated as superior to Mutual's hard-coded system. CHAMPUS indicates that South Carolina's parameter-driven system is less costly and easier to modify or enhance than the hard-coded system because the criteria for editing claims are external to the basic computer programs. Modifications and enhancements can be accomplished easily by changing the modular parameters rather than the main software, as is required by Mutual's hard-coded system.

Mutual contends CHAMPUS's evaluation of South Carolina's parameter-driven system demonstrates that CHAMPUS developed a preference for the parameter-driven system either prior to or just after the solicitation was issued, which amounted to a change in CHAMPUS's requirements. Mutual contends that this change was never disclosed and asserts that CHAMPUS should either have modified the RFP to reflect the change or advised Mutual in discussions of the new requirement.

Mutual's argument is without merit. The RFP expressed CHAMPUS's ADP requirements in terms of the functions which the ADP system would be required to perform. CHAMPUS evaluated the ADP systems on the basis of their ability to satisfy these requirements. Offerors were free to propose whatever system they liked so long as it could perform

these functions. Contrary to Mutual's suggestion, we find that CHAMPUS's requirements did not change and that the higher rating which CHAMPUS accorded to South Carolina's proposed system reflected nothing more than CHAMPUS's reasonable assessment that South Carolina's system, with its capability for easier modification and greater flexibility, offered a superior ability to meet CHAMPUS's functional requirements. To the extent that Mutual's system may have been less satisfactory, even though acceptable, we can only attribute it to Mutual's own lack of ingenuity and inventiveness in the design of its system--which, we add, CHAMPUS was under no obligation to point out during discussions. 51 Comp. Gen. 621 (1972); ADP Network Services, Inc., B-200675, March 2, 1981, 81-1 CPD 157; Gould, Inc., B-192930, May 7, 1979, 79-1 CPD 311.

Mutual contends that the debriefing revealed that South Carolina was awarded points on the basis of its "desire" for the contract. CHAMPUS replies that Mutual has misconstrued its debriefing remarks. CHAMPUS contends it told Mutual that it appeared nonincumbents were devoting significant resources to the development of their proposals. This statement was made, CHAMPUS explains, for the purpose of encouraging Mutual to improve its proposal for future procurements.

CHAMPUS's explanation is reasonable. A primary function of the debriefing is to provide unsuccessful offerors with information that would assist them in improving their future proposals. We further note that Mutual has not refuted CHAMPUS's explanation. We accordingly deny this ground of protest.

Mutual contends that an examination of CHAMPUS's scoresheets will reveal that South Carolina received bonus points for other extraneous factors. Our in camera examination of the scoresheets revealed no such thing. On the contrary, the evaluation was reasonable and in accord with the criteria listed in the RFP. See Mutual I.

#### Improper Communications

Mutual contends that CHAMPUS conducted improper oral communications with South Carolina in violation of the RFP provision that explanations required by offerors had to be

requested in writing and that any information given to one offeror would be furnished to all offerors. In this regard, Mutual asserts that CHAMPUS personnel stated at Mutual's debriefing that during the period between issuance of the solicitation and receipt of initial proposals, representatives of South Carolina were on the telephone with CHAMPUS personnel at least once a day, requesting and obtaining information with respect to the solicitation requirements and the preparation of the firm's proposal.

CHAMPUS replies that the frequent telephone conversations referred to at the debriefing were with Blue Cross of Maryland rather than South Carolina. CHAMPUS concedes, however, that there were about 10 telephone conversations with South Carolina. CHAMPUS denies that these discussions pertained to the interpretation of the solicitation or the preparation of proposals. CHAMPUS argues that an amendment to the solicitation was therefore unnecessary.

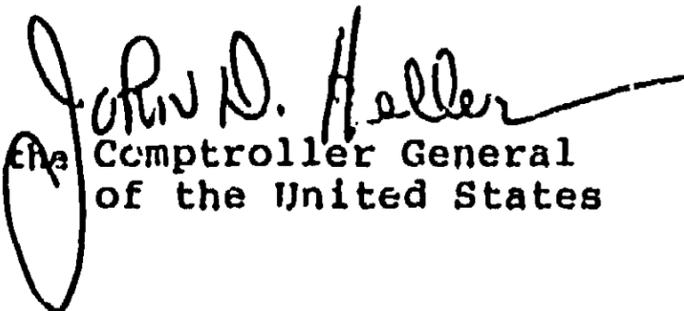
The RFP incorporates a provision based on Defense Acquisition Regulation (DAR) § 3-505(c) (Defense Acquisition Circular # 76-20, September 17, 1979), which requires that information given to any prospective offeror be furnished to all prospective offerors if the information is necessary for the preparation of proposals or if the lack of the information would be prejudicial to uninformed offerors. In EG&G Incorporated, B-182566, April 10, 1975, 75-1 CPD 221, we indicated that DAR (then ASPR) § 3-505(c) was not intended to prohibit any contact with prospective offerors on an individual basis, but was intended to preclude the exchange of technical information with one offeror to the detriment of others.

Mutual does not cite any specific instance of South Carolina being given information to the detriment of Mutual or any other offeror. Mutual instead argues:

"These conversations must inevitably have provided South Carolina with an advantage over other offerors. If the calls did not benefit South Carolina, the calls would not have continued or been so frequent. Moreover, the conversations could well have been with persons at CHAMPUS who later participated in evaluating technical proposals of South Carolina."

These allegations are based on speculations as to what might have occurred. In our view, Mutual has not affirmatively demonstrated that South Carolina received an informational advantage in violation of DAR § 3-505(c). See Health Maintenance Systems, B-200755, April 3, 1981, 81-1 CPD 255; EG&G Incorporated, supra.

Mutual's protest is denied.

  
For the Comptroller General  
of the United States