

Mo-r-ow

DECISION



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

FILE: B-222466

DATE: June 19, 1986

MATTER OF: Washington Occupational Health
Associates, Inc.

DIGEST:

1. Protester's allegation that procuring agency failed to evaluate proposals in accordance with the solicitation's evaluation criteria is without merit. While the procuring agency did not specifically advise offerors that proposing physicians with over 10 years of experience would result in receiving maximum points in the category, the evaluation was not improper because this factor was reasonably related to the stated criteria.
2. In a negotiated procurement, there is no requirement that award be made on the basis of lowest price or cost to the government. The procuring agency may select a more highly rated technical proposal if doing so is consistent with the evaluation scheme set forth in the solicitation.

Washington Occupational Health Associates, Inc. (WOHA), protests the award of a contract for employee health services to Compton Associates (CA) under request for proposals (RFP) No. 86-101 issued by the National Science Foundation (NSF), Washington, D.C. WOHA contends that NSF improperly applied the RFP's evaluation criteria.

We deny the protest.

Section "M" of the RFP advised offerors that while price would be considered in determining which proposal offered the greatest value to the government, the primary basis for selection would be the technical evaluation. The technical evaluation criteria were listed in the RFP in descending order of importance as follows:

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"A. Personnel Qualifications

This criteria contains the following sub-criteria which are listed in descending order of importance.

1. Training and experience of physician beyond that specified as a minimum.
2. Training and experience of Chief Nurse beyond that specified as a minimum.
3. Training and experience of the Medical Secretary beyond that specified as a minimum.

The minimums are indicated in Attachment A - Position Qualifications.

"B. Understanding of and Approach to the Required Work.

This criteria will judge each offeror's understanding and comprehension of the required medical services, understanding of areas of importance and planning for the day to day operation of the medical facility.

This criteria contains the following sub-criteria in which sub-criteria No. 1 is more important than the totals of Nos. 2, 3 and 4 are of equal importance.

1. Contractor's on-site organization.
2. Amount of authority vested in the on-site Physician.
3. Ability to provide qualified substitute personnel.
4. Home office's potential to provide professional supervision and leadership to assure satisfactory performance of services by the on site staff."

Eight offerors submitted proposals in response to the RFP and were evaluated by a four-member panel utilizing the evaluation criteria listed in the RFP. Four proposals were eliminated from the competitive range. NSF conducted discussions with the remaining offerors and requested best and final offers. CA received the highest technical score of 3,516 points and WOHA was the next closest offeror with

3,232 points. WOHA was 6 percent lower in price than CA while the technical score of CA was 8.8 percent higher. Price was not rated as a separate factor; however, the panel considered price in making its final determination. In light of the RFP's direction that technical merit would be the primary basis for award, the evaluation panel determined that CA represented the best value to the government, and award was made to CA.

WOHA contends that NSF exceeded the bounds of the RFP in evaluating physicians. WOHA alleges that NSF advised it during a debriefing that WOHA's physician had 8 years of experience, which resulted in a rating of "very good," and, that CA's physician had over 10 years of experience and, thus, was rated outstanding. WOHA states that NSF arbitrarily chose board certification as the beginning point for evaluating the number of years of physician experience and failed to specify this in the RFP's technical evaluation criteria. This action, WOHA contends, violated the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.605(e) (1985), which requires significant subfactors to be listed in the RFP, and FAR § 15.608(a), which requires the agency to evaluate proposals solely on factors specified in the solicitation. Further, WOHA alleges that NSF also used the "Qualifications Standards for Medical Officers and Nurses" issued by the Office of Personnel Management (OPM) to evaluate proposed personnel. WOHA contends that it was prejudiced by NSF's actions because it did not have the opportunity to tailor its personnel to meet the criteria actually being used to evaluate proposals. WOHA contends that, if evaluated properly, its proposal rated higher than CA's in personnel experience and in terms of understanding the work. WOHA also believes that its lower priced proposal should have outweighed any difference in the technical proposals.

The determination of the relative merits of proposals, particularly with respect to technical considerations, is primarily the responsibility of the contracting agency, not our Office, which must bear the burden of any difficulties resulting from a defective evaluation. Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 C.P.D. ¶ 677. In light of this, we repeatedly have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals, and that their decision will not be disturbed unless shown to be arbitrary or in violation of the procurement laws or regulations.

While awards may not be based on criteria not made known to prospective offerors, North American Automated Systems Co., Inc., B-216561, Feb. 15, 1985, 85-1 C.P.D.

¶ 203, an agency need not specifically identify various aspects of the evaluation criteria if such aspects are reasonably related to the stated criteria. Technical Services Corp., 64 Comp. Gen. 245 (1985), 85-1 C.P.D. ¶ 152. The RFP here clearly advises that technical proposals will be evaluated on the training and experience of the listed personnel beyond that specified as a minimum. The RFP specified 3 years as the minimum experience for each personnel category and it also listed educational, certification, and licensing requirements for each category. Although WOHA complains about the number of years after board certification being utilized as a criterion for determining the qualification of its physician, the RFP specifically listed certification by the "American Board of Internal Medicine" as required experience. As pointed out by WOHA, NSF evaluated physician personnel qualifications based on the number of years of experience, 10 or more years warranting the maximum points. However, besides 10 or more years of experience, an award of maximum points also required the proposal to show experience in other related medical fields beyond those listed as desirable and the proposal had to substantially exceed the minimum requirements and desirable experience factors.

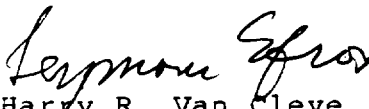
We find that NSF's use of 10 years as the measure for determining maximum points was reasonably related to the stated criteria, even though it was not specifically stated in the RFP. Therefore, we find that WOHA's allegation that the evaluation criteria were misapplied is without merit. Also we find no merit to the allegation that NSF improperly used OPM qualifications to evaluate proposals since this was a rational standard to use and all offerors were subjected to the same criteria.

While WOHA contends that its proposal should have been rated higher technically than CA's proposal, this is essentially a disagreement with the technical evaluation. WOHA was scored lower because the physician it proposed did not meet the criteria listed above for maximum points. Based on our examination of the record, we find no basis to conclude that the evaluation panel acted unreasonably in applying the evaluation criteria to evaluate CA's proposal as the highest ranking proposal. The fact that the protester disagrees with the agency's evaluation does not render the evaluation unreasonable. National Capital Medical Foundation, Inc., B-215303.5, June 4, 1985, 85-1 C.P.D. ¶ 637.

Regarding WOHA's allegation that its proposal should have been selected because it was lower in price, we note that there is no requirement in a negotiated procurement

that award be made on the basis of lowest price or cost to the government. Blurton, Banks & Associates, Inc. B-211702, Oct. 12, 1983, 83-2 C.P.D. ¶ 454. The procuring agency has the discretion to select a more highly rated technical proposal if doing so is in the government's best interests and is consistent with the evaluation scheme set forth in the solicitation. Electronic Data Systems Federal Corp., B-207311, Mar. 16, 1983, 83-1 C.P.D. ¶ 264. As noted above, the RFP advised that the primary basis for award would be technical considerations. On the record before our Office, we do not find that NSF acted unreasonably in selecting the higher priced CA proposal for award.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel