



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Volunteers of America
File: B-225460
Date: March 10, 1987

DIGEST

1. Protest that contracting agency improperly evaluated awardee's proposed staff and quality of program for a half-way house is without merit when, in best and final offer, the awardee revises staffing schedules to comply with solicitation requirements. The agency need not downgrade the awardee because the protester proposes additional staff members that, in agency's judgment, are not necessary.
2. Protest that contracting agency improperly failed to consider that awardee's proposed facility for a halfway house did not meet fire and safety requirements is without merit when the solicitation specifically permits offerors not in compliance to submit an action plan, with target dates, for correction of deficiencies and, in best and final offer, the awardee agrees to meet all requirements within 45 days of award. Requiring correction before award could unduly restrict competition, since firms other than the incumbent may not be willing to make expensive renovations without a contract.
3. Requirement that halfway house comply with all applicable zoning ordinances, laws and codes is a condition of performance that an awardee must meet. Whether it does so is a matter of contract administration, not for resolution in a bid protest.
4. Award on the basis of highest total point score is not required by a solicitation containing a formula for scoring technical and price proposals where the solicitation does not state that award will be made on this basis, but instead provides that award will be made to the offeror whose proposal is most advantageous to the government, price and other factors considered.

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DECISION

Volunteers of America protests the award of a contract for halfway house services by the Federal Bureau of Prisons, Department of Justice, to Central Boarding Home, Inc. The protester contends that the evaluation of the awardee's proposal was not consistent with stated criteria and that its proposal should have been selected instead because it received the highest point score based on an evaluation of both technical and price proposals. We deny the protest.

BACKGROUND

The Northeast Regional Office of the Federal Bureau of Prisons issued this RFP, No. 272-66, on April 7, 1986. The solicitation, which contemplated a fixed-price requirements contract, covered residential and community treatment services to be provided over a 3-year period for male and female offenders held under authority of various federal statutes. These services, for an estimated 65 residents a day, were to be provided within a 30 mile radius of Philadelphia, Pennsylvania.

The RFP provided that the contractor's facility must conform to all applicable zoning ordinances, laws and codes, and to local building, sanitation, health and fire codes. A section entitled "Safety and Sanitation" stated that the proposed structure must meet the applicable National Fire Protection Association Life Safety Code and, at a minimum, meet 13 basic Life Safety requirements. Compliance was to be demonstrated as follows: offerors were to submit documents relating to physical characteristics of the facility to be used, including deeds, licenses, and permits, with their proposals; before award, the proposed awardee was to submit a report from a licensed fire protection engineer and a plan detailing actions it would undertake to correct any deficiencies cited in the report; and by the date of performance, which was to begin 45 days after award, the awardee was to furnish the contracting activity with written proof of compliance with all zoning and local ordinances.

The RFP, as amended, also provided that proposals would be evaluated under six criteria, with maximum points as follows:

Program Quality	30 points
Physical Facility	30 points
Staff Quality	20 points
Location/Transportation	5 points
Accreditation	5 points
Price	30 points

For each of the technical factors, a proposal was to be given the maximum possible points if considered excellent (for example, if the physical facility met all conditions of the statement of work); half of this amount if considered satisfactory (for example, if the physical facility was in compliance with minor deviations), or zero points if considered unsatisfactory (for example, if the physical facility did not meet life safety standards). The solicitation further provided that points for physical facilities would be based on an on-site inspection by a Bureau of Prisons' fire safety official. As for price, the proposal with the lowest price a day per person would be given the full 30 points and higher-priced proposals a percentage of this amount.

The agency received three proposals, one of which was subsequently withdrawn. During the initial evaluation, it awarded the following scores to those at issue here:

	Volunteers of America	Central Boarding Home
Program Quality	30	15
Physical Facility	15	15
Staff Quality	20	20
Location	5	5
Accreditation	5	0
Price	<u>29</u>	<u>30</u>
TOTAL	104	85

Following discussions and submission of best and final offers, the agency reevaluated, giving both offerors the maximum possible points for program quality and physical facility. Since Central Boarding Home was not accredited, its revised total was 115 out of a possible 120 points; Volunteers of America's revised total was 119. Central Boarding Home's proposed price was \$29.95 a day per person; Volunteers of America's was \$31. The contracting officer determined that the 4-point difference did not justify award at the higher price (approximately \$75,000 over the term of the contract), and on October 27, awarded the contract to Central Boarding Home. Performance has continued despite the protest under a finding that such was in the best interest of the government.

DISCUSSION

Evaluation of Technical Proposals

Volunteers of America contends that the technical points awarded to Central Boarding Home were inflated, so that the difference between the two facilities is greater than reflected by their respective point scores. The protester alleges that Central Boarding Home's staff lacks required credentials; may not be present between 4 p.m. and 12 p.m., when the majority of residents are at the facility; and, in comparison, that the protester's proposed staff, in addition to two full-time case workers and an employment counselor, includes part-time counselors with expertise in such areas as education, family problems, and drugs, as well as group therapists, an attorney, a physician, and a chaplain.

With regard to Central Boarding Home's physical facilities, the protester argues that the awardee's facility will require extensive renovations to be in compliance with minimum solicitation requirements; and that the awardee only promised to be in compliance within 45 days after award. In comparison, the protester asserts, its own facility is sprinkled, monitored, and generally "state of the art" with regard to fire and safety requirements. Finally, the protester argues that the residential zoning of Central Boarding Home's proposed facility does not permit operation of a program that involves monitoring (for drug use) and counseling.

In reviewing protests against allegedly improper evaluations, our Office will not substitute its judgment for that of the contracting agency, but rather will examine the record to determine whether the agency's judgment was reasonable and in accord with stated criteria. ORI Inc., B-215775, Mar. 4, 1985, 85-1 CPD ¶ 266.

Given the terms of this solicitation, we conclude that the agency's evaluation had a reasonable basis and was conducted in accord with the stated criteria. An examination of the resumes submitted by the awardee shows that the key personnel it proposed had both the requisite professional degrees and experience, so that it was entitled to receive the maximum score available for staff quality. In its best and final offer, the awardee revised proposed staffing levels so that a counselor and social worker would be assigned to work evenings and would be available for crisis intervention on weekends and holidays. Therefore the awardee also was entitled to the maximum points for program quality.

Moreover, during discussions, the Bureau of Prisons advised Volunteers of America that its proposed staff included positions that the agency did not feel were necessary; it suggested that the firm evaluate the positions in terms of cost effectiveness. The protester responded in its best and final offer that it would be able to furnish services of the staff in question "without cost" to the Bureau of Prisons. While this may be the case, we do not believe that the agency was required to downgrade the awardee because the protester offered staff in excess of that which, in the agency's judgment, was required.

With regard to physical facilities, we recognize that the protester had fewer, and arguably less serious, deficiencies in the areas of fire and safety than the awardee. Those cited by the agency in a July 8 letter to Volunteers of America included the need to replace certain windows; to remove foam pillows, chairs, and infant furnishings that contained urethane or polyurethane from sleeping units; and to provide 24-hour lighting for all stairwells and exit routes. In its best and final offer, the protester stated that all these changes had been accomplished.

Central Boarding Home, by contrast, was advised during discussions that none of the mattresses and pillows in its proposed facility were fire retardant; that hard wired smoke detectors with 24-hour monitoring were required; that several areas had inadequate emergency lighting; that doors must swing in the direction of egress; that all room doors must be of solid construction, fire rated, and have closures installed; and that an outside gate, which was nailed shut, must be made available for emergency use. In its best and final offer, Central Boarding Home responded, for each specific requirement, that it would be met within 45 days of award.

In our opinion, under the terms of this solicitation, compliance with the fire and safety requirements within 45 days of award was all that was necessary. The solicitation specifically stated that if the proposed facility was not "presently in total compliance" with the statement of work, as shown by an on-site inspection by a Bureau of Prisons fire safety official, the offeror must submit an action plan with target dates that would be reviewed by the fire safety official. Central Boarding Home did this, keying its target dates to the starting date for performance of the contract. While the action plan was not extremely detailed, it stated, for example, that the awardee had engaged a firm of fire detection engineers to draft specifications for a smoke detection system, and that it had directed this firm to

install the system throughout the corridors of the proposed facility, with an enunciator panel in the central office area where staff members would be able to monitor it 24 hours a day.

As the agency report points out, a requirement that all offerors' proposed facilities meet fire and safety requirements before award could have unduly restricted competition. While the protester, as the incumbent contractor, could be expected to have a facility in substantial compliance at the time that it submitted its proposal, we doubt that any new competitor would be willing to make extensive and expensive renovations to a proposed facility before being awarded the contract. Whether Central Boarding Home in fact complied with the fire and safety requirements in the statement of work within 45 days is a matter of contract administration, and thus not for review under our Bid Protest Regulations. See 4 C.F.R. § 21.3(f)(1) (1986).

With regard to zoning, as noted above, the statement of work requires the contractor's facility to comply with all applicable zoning ordinances, laws, and codes. This is a condition of performance that Central Boarding Home must meet. See Fort Wainwright Developers, et al., B-221374.4 et al., June 20, 1986, 86-1 CPD ¶ 573. Whether it does so is, similarly, a matter of contract administration.

Accordingly, we deny the protest with regard to evaluation of technical proposals.

Source Selection

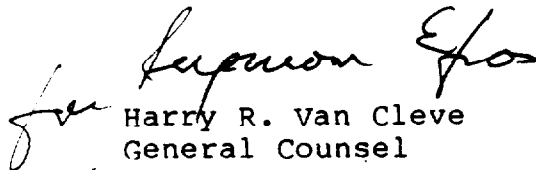
Volunteers of America alleges that the RFP provided for award to the offeror receiving the highest total score, based on an evaluation of technical and cost proposals, and that the agency orally confirmed this basis of award during discussions. Since it received the highest total score, the protester maintains that it should have been selected for award. The firm argues that its own price, \$31 a day per resident, is reasonable, since it is the same as its price for 3 previous years and is less than prices for similar services elsewhere in the northeast. The contracting officer improperly applied the evaluation criteria, making cost the determinative factor, in comparing a lower-priced proposal for an unaccredited facility with a higher-priced but superior proposal, the protester concludes.

The solicitation did not provide for award on the basis of highest total point score. While the RFP did contain an evaluation formula that included both technical and price

factors, it stated that award would be made to the offeror whose proposal was most advantageous to the government, price and other factors considered. The point scores were thus appropriately considered as mere guides for the source selection official, who had the discretion to determine whether the technical advantage enjoyed by Volunteers of America was worth the higher price of its proposal. ICOS Corporation of America, B-225392, Feb. 10, 1987, 87-1 CPD ¶ _____; see also Harrison Systems Ltd., 63 Comp. Gen. 379 (1984), 84-1 CPD ¶ 572; Telecommunications Management Corp., 57 Comp. Gen. 251 (1978), 78-1 CPD ¶ 80.

The record shows that the contracting officer here determined that price should be the determinative factor, given the relatively minor difference in total point scores between the two offerors. This determination was based on the considered judgment of the contracting officer that lack of accreditation, for which the awardee had been downgraded 5 points, did not justify the approximately \$75,000 additional cost involved in making an award to the protester. This is the type of decision vested in the discretion of the contracting officer, and we find no basis to object to it here. See AMG Associates, Inc., B-220565, Dec. 16, 1985, 85-2 CPD ¶ 673.

The protest is denied. -


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General Counsel