



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Phone-A-Gram System, Inc.

File: B-228546; B-228546.2

Date: February 17, 1988

DIGEST

1. Allegation that the contracting agency improperly accepted an offer that did not meet all of the requirements set forth in the request for proposals is without merit, where a review of the record shows that the awardee's offer met all the material requirements and the only deviation in the awardee's proposal could properly be waived as a minor deviation.
2. Award properly was made to the lowest-priced, technically acceptable offeror on the basis of initial offers where the solicitation advised all offerors that award might be based on initial proposals, and the competition demonstrates that acceptance of the initial proposal will result in the lowest overall cost to the government.

DECISION

Phone-A-Gram System, Inc. (PAG), protests the Department of Health and Human Services' award of a 3-year contract to CompuMed, Inc., pursuant to request for proposals (RFP) No. HRSA-240-BHCD-3(8). The RFP solicited offers to provide electrocardiogram services to health units located throughout the United States via a telecommunications network, using contractor physicians to interpret the data on a fixed-price per analysis basis. PAG alleges that CompuMed's proposal was technically unacceptable, because it did not conform to the RFP's requirements in a number of areas. We find that the allegations are without merit and, therefore, deny the protest.

The agency's Health Resources and Services Administration issued the RFP on July 7, 1987, and proposals were required to be submitted by August 5. Of the three proposals received, one was rejected as technically unacceptable, while the PAG and CompuMed proposals were determined to be technically acceptable and essentially equal from a technical standpoint. The contracting officer determined

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that, because there was an accurate pricing history, there had been adequate price competition in this procurement, and there were no technical issues to be resolved during discussions, award properly could be made on the basis of initial proposals. Accordingly, a contract was awarded to CompuMed on the basis of its lower-priced initial proposal, on October 6. PAG filed its protest in our Office on October 16, and the agency has determined that it is in the best interest of the government to allow CompuMed to continue to perform these services under its contract pending resolution of the protest by our Office.

The contracting agency has the primary responsibility for determining its minimum needs and for determining whether an offer will satisfy those needs, since it is the contracting agency that must bear the burden of any difficulties incurred by reason of a defective evaluation. See Rhine Air, B-226907, July 29, 1987, 87-2 CPD ¶ 110. The assessment of the relative merits of proposals, particularly with regard to technical considerations, also is primarily the responsibility of the contracting agency. IBIS Corp., B-224542, Feb. 9, 1987, 87-1 CPD ¶ 136. Agency officials enjoy a reasonable range of discretion in the evaluation of proposals, and their judgments as to the quality of proposals will not be disturbed unless they are shown to be unreasonable. See Valcor Engineering Corp., B-227019, et al., Aug. 10, 1987, 66 Comp. Gen. ___, 87-2 CPD ¶ 143; IBIS Corp., B-224542, supra. We find the Department of Health and Human Services' judgment here to be reasonable.

PAG contends that CompuMed's proposal is technically unacceptable because it does not meet the RFP requirements in nine specific ways.

(1) PAG alleges that the software proposed by CompuMed only transmits one-third of the information gathered in an electrocardiogram test and, therefore, does not meet the RFP requirement that the proposed system scan the entire electrocardiogram record to determine rhythm. The pertinent RFP provision, however, states only that "The software shall be appropriate for screening a working population not noted or selected for heart disease." Our examination of CompuMed's proposal reveals nothing to indicate that anything less than the full electrocardiogram test results will be transmitted and scanned by the system, and, in fact, the proposal specifically states that each analysis will indicate the type of rhythm or arrhythm. Thus, as CompuMed's offer represented an unqualified promise to meet the RFP requirement regarding the software package and scanning of electrocardiogram test results, we believe the agency's determination that CompuMed's offer was technically acceptable in this area was justified.

(2) PAG suggests that the CompuMed system is deficient because the system will only notify the person doing the electrocardiogram testing that a test has been aborted rather than interpreting the problem or assisting the user to resolve the technical problem. We find this allegation to be without merit because CompuMed's proposal specifically states: "Technical difficulties, including AC noise, baseline wander, muscle artifact, missing leads, over range conditions and transmission problems, are recognized and interpreted by the software."

(3) PAG argues that CompuMed's system may not be compatible with the agency's FTS telephone lines, and, therefore, may have transmission problems that will result in additional costs to the government for the use of commercial telephone lines. However, our review finds that CompuMed's proposal indicates that its transmitting and receiving terminals are "FTS-compatible" and CompuMed has offered the government the use of its WATS telephone lines at no additional charge. Thus, the proposal properly was found to be technically acceptable.

(4) PAG charges that CompuMed's equipment is not grounded properly and does not meet the RFP's requirements in this connection. To the contrary, however, the CompuMed proposal states that all terminals are grounded in compliance with the RFP's requirement. Again, the Department of Health and Human Services properly determined that CompuMed's proposal met its requirement.

(5) PAG's next argument concerns the RFP requirement that the contractor provide "call-back" services by a board-certified cardiologist 24 hours per day, 7 days per week, so that physicians or nurses using the system can request immediate readings of electrocardiogram test results in emergencies. PAG alleges that CompuMed's system is deficient because the firm does not have on-site cardiologists and requires the physicians/nurses to call the cardiologists on the telephone for emergency readings.

We do not agree that CompuMed's proposal is deficient in this area. The RFP specifically states that the physician/nurse user will request the reading, that such request and reading may be transmitted by telephone, and that the contractor's cardiologist must be available on a 24-hour basis. CompuMed's proposal states that it has several cardiologists on call and that they can be reached by telephone 24 hours-a-day on its emergency hotline. The proposal also states that the user may request an emergency reading of test results, and that the CompuMed system itself will initiate emergency overreads by the cardiologist when

it reads a potentially life-threatening electrocardiogram. Thus, CompuMed's proposal complies with the "call-back" requirement.

(6) PAG alleges that CompuMed's proposal is technically unacceptable because CompuMed proposes to use numbers rather than patient names to identify patients. There is no merit to this allegation. Identification of patients is required of the contractor for two distinct purposes. First, patients must be identified when the electrocardiogram test is analyzed. Second, patient identification is required as part of a monthly report/billing statement. It is true that CompuMed will use an identification number instead of the patient's name when the electrocardiogram is analyzed. However, this is in full compliance with the RFP, which allows the use of number identifiers if the health unit receives a written interpretation of test results within 10 minutes; CompuMed's proposal promises to provide its interpretation within 3 minutes. Regarding the monthly report/billing statement, CompuMed's proposal specifically states that it will provide a detailed report including patient names and itemized charges on a monthly basis as required by the RFP.

(7) PAG asserts that CompuMed's proposal does not meet the RFP's training and installation requirements, because:

"CompuMed routinely conducts their training over the telephone with the health unit personnel actually doing the installation, rather than providing on-site training and installation service."

However, CompuMed's proposal states that CompuMed's personnel will deliver, install, and maintain all terminals. CompuMed also proposes to provide on-site training for health unit personnel at the time the terminals are installed, and training will include live patient demonstrations. Thus, CompuMed's proposal clearly meets the RFP requirements in this regard.

(8) PAG contends that CompuMed's proposal does not meet the RFP's requirement that a written report be provided to the health unit showing electrocardiogram measurements and interpretations on an 8-1/2-inch by 11-inch mounted copy. CompuMed concedes that its reports are produced in "strip" form, but points out that they are ready for mounting on CompuMed-furnished mounting cards and that the mounting process should take less than 15 seconds per report. The contracting officer determined that CompuMed's approach was technically acceptable and that mounting of the reports by health unit personnel using materials supplied by CompuMed "is not seen to be a significant problem."

We agree with the Department of Health and Human Services' characterization of the difference between the RFP requirement and CompuMed's approach as insignificant. PAG's proposed price averaged \$4.50 per electrocardiogram test while CompuMed's price was only \$3.75 per test. PAG has not shown that the simple act of mounting the strip report on the mounting card would cost the agency any more than a negligible amount of money per test. In any event, the basic requirement that a detailed report/interpretation be provided is met by CompuMed's approach. Therefore, we find the contracting officer's position to be reasonable. See Roarda, Inc., B-192443, Nov. 22, 1978, 78-2 CPD ¶ 359.

(9) PAG's final argument concerning the acceptability of CompuMed's proposal centers on the RFP requirement dealing with quality control. The RFP stated:

"A quality control process shall be documented by the Contractor (e.g., a cardiologist overread of 10 percent of EKGs)."

PAG alleges that CompuMed should have been rejected because it proposed that only 2 percent of all electrocardiograms be overread by a cardiologist. The Department of Health and Human Services believes that the quality control offered by CompuMed is adequate. Furthermore, the agency argues that the "10-percent" statement in the RFP is merely an example of a quality control program that would be considered acceptable.

In our opinion, from the language set out in the RFP concerning quality control, it is clear that offerors were allowed to propose their own approaches to the quality control problem and that offerors were not required to provide 10-percent overread. There is nothing in the above-quoted provision to support the protester's interpretation of the requirement as meaning that only offers including 10-percent overread as their quality control would be considered acceptable. We note further that the parenthetical phrase contained in the quality control requirement begins with "e.g.," which means that an example follows.

CompuMed's proposal stated not only that approximately 2 percent of all test results would be overread by a cardiologist, but it also stated that a random sample of several thousand test results would be reviewed periodically. We believe the agency properly determined CompuMed's proposal to be acceptable.

In view of the above discussion, we find that the Department of Health and Human Services' determination that CompuMed's proposal was technically acceptable was reasonable.

The sole remaining issue is whether the agency properly made award on the basis of initial proposals without discussions. A contracting agency may award a contract based on initial proposals where the solicitation advises offerors of that possibility and the competition or prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government.

The Marquardt Co., B-224289, Dec. 9, 1986, 86-2 CPD ¶ 660.

Here, the RFP stated that award would be made to the offeror whose proposal was determined to be most advantageous to the government, and that cost and technical considerations would be given equal weight in the selection process. The RFP further advised offerors that the award might be made on the basis of initial offers without discussions. The evaluators rated PAG's technical proposal at 96.7 out of a possible 100 technical evaluation points and CompuMed's proposal at 93.0 points. Our review of the record shows no basis to object to the contracting officer's determination that the technical proposals were essentially technically equal. As there were no technical deficiencies to be resolved through discussions, no negotiations were in fact conducted, and there apparently was adequate competition in this procurement, it was proper and consistent with the evaluation criteria to award to CompuMed, the lower-priced offeror. SEC, Inc., B-226978, July 13, 1987, 87-2 CPD ¶ 38.

The protest is denied.



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General Counsel