



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: McCollum and Associates
File: B-232221
Date: November 10, 1988

DIGEST

1. Procuring officials are afforded a reasonable degree of discretion in the evaluation of proposals and their evaluation will not be disturbed unless shown to be arbitrary or in violation of procurement laws or regulations. A mere disagreement between the protester and the agency over the technical evaluation is not sufficient to show that the evaluation was unreasonable.
2. Protest that procurement should have been set aside for small business concerns is untimely when not filed prior to closing date for receipt of proposals.
3. General Accounting Office does not conduct investigations pursuant to its bid protest function for the purpose of establishing the validity of a protester's speculative statements.

DECISION

McCollum and Associates protests the award of a contract to Human Affairs International, Inc. under request for proposals (RFP) No. YA551-RFP8-340017, issued by the Bureau of Land Management (BLM), Department of the Interior, for the development and performance of a counseling services program for all BLM employees in the state of Utah. McCollum contends that the agency's technical evaluation of its proposal was unreasonable. The protester also contends that the solicitation should have been set aside for small businesses and requests that BLM's record of all contract awards in Utah be examined to determine if there exists a pattern of discrimination against small businesses, particularly women-owned small businesses.

We deny the protest in part and dismiss it in part.

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The RFP, issued on April 11, 1988, stated that the contractor would be responsible for establishing and conducting a program of effective, efficient professional counseling services for approximately 560 BLM employees performing duties in a broad range of occupational endeavors including professional, administrative, technical, clerical, trade and craft positions in 12 BLM field offices located throughout Utah. The RFP contemplated award of a firm-fixed-price contract, with a 20 percent variation in quantity, and required the submission of technical and price proposals. Section J of the RFP included detailed instructions to offerors on how to prepare their technical and price proposals.

Section M of the RFP, "Evaluation Factors for Award," stated that technical merit would be of greater importance than price in awarding the contract. BLM used a 60/40 ratio of technical factors to price. Section M also listed four technical evaluation factors, in descending order of importance, based on a 100-point scale: (1) qualifications of personnel performing training, problem evaluation, and casework management (50 points); (2) technical approach: understanding of the problem (25 points); (3) realistic plan and schedule (15 points); and (4) proposed methodology of performing required training courses (10 points). Price scores based on a 100-point scale were assigned using the lowest price offered as the benchmark.

Three offerors submitted technical and price proposals. All offerors were found acceptable and were asked to submit best and final offers (BAFOs). McCollum, which BLM asked to address 6 areas in its technical proposal and 5 areas in its price proposal when submitting its BAFO, received a final technical score of 47, a price score of 43.32 and a total score of 45.53 (based on the 60/40 ratio of technical factors to price). Human Affairs received a technical score of 92, a price score of 100 (because its price was lowest), and a total score of 95.20. On July 20, BLM awarded the contract to Human Affairs based on its top technical ranking and its low price. McCollum received notice of the award on July 29 and protested to our Office on August 2.

McCollum contends that the deficiencies noted by BLM in its BAFO "reveal a pattern of subjective and unsubstantiated criticisms of a minor magnitude, far too thin in substance to make my proposal technically unacceptable." BLM, however, did not reject McCollum's proposal as technically

unacceptable; what McCollum is apparently concerned with is the low score that its final technical proposal received.^{1/}

Initially, we note that the evaluation and scoring of technical proposals is the function of the contracting agency and our review of allegedly improper evaluation is limited to the determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Delaney, Siegel, Zorn & Assocs., B-224578.2, Feb. 10, 1987, 87-1 CPD ¶ 144. Moreover, the protester has the burden of affirmatively proving its case, and mere disagreement with a technical evaluation does not satisfy this requirement. Structural Analysis Technologies, Inc., B-228020, Nov. 9, 1987, 87-2 CPD ¶ 466.

In its agency report, BLM states that it found McCollum's final technical proposal deficient in several respects, primarily in its failure to submit adequate proof of licensing of the proposed professional personnel, despite specific instructions in Section J of the RFP and a request during discussions from BLM to do so. McCollum included only resumes of the proposed personnel, and no copies of current state licenses. Other major concerns of BLM were: (1) that McCollum's proposed training and orientation program for implementation of the counseling services could not adequately be carried out by the one person proposed, and (2) that McCollum's proposed staffing demonstrated a

^{1/} In its comments on the agency report, McCollum also questions BLM's price scoring. McCollum states that it does not understand how its initial price score of 96.04 dropped to a final price score of 43.32. The explanation is that the scores were assigned using the lowest price submitted as the benchmark on a 100-point scale. Under this method, the lowest price receives the full score of 100 and all other prices are assigned scores on the scale based on the difference between the benchmark and the price being scored. McCollum's initial price, which was reasonably close to the awardee's initial price was increased in its BAFO while the low price of Human Affairs, which was used as the benchmark, was reduced substantially in its BAFO. McCollum also states that it appears its BAFO price was not used in the final price scoring since the price shown on the scoring sheets for McCollum was lower than the price entered on its BAFO. However, our review of the record indicates that BLM did indeed use McCollum's BAFO price, but simply adjusted it downward for purposes of evaluation to eliminate additional hours of counseling added by McCollum, thus, allowing evaluation of prices proposals on an equal basis using the minimum quantities included in the RFP.

lack of understanding of the logistics required in providing counseling services outside the Salt Lake City area and throughout the state of Utah. BLM also found that portions of McCollum's technical proposal simply quoted verbatim several sections of the solicitation describing the services required without stating how those services would be performed by McCollum.

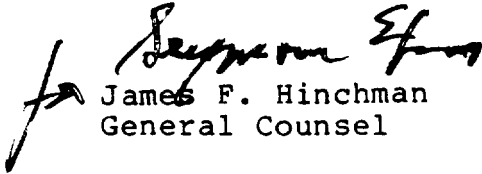
In response, McCollum admits that it only submitted resumes as proof of licensing but argues that resumes should be sufficient. Similarly, McCollum adds that the one person proposed to conduct all of the training and orientation programs should be sufficient because of that person's vast experience in traveling and presenting such programs on a much more rigorous schedule. As to BLM's concerns with the logistics of staffing, McCollum simply refers to the work plan in its BAFO without further elaboration. McCollum never responds to BLM's criticism that its proposal quoted several sections of the RFP statement of work without explaining how McCollum would perform that work.

Our review of this record, including McCollum's BAFO, the evaluators' worksheets and the source selection report summary, support BLM's conclusion that McCollum's proposal was deficient in the respects discussed above. In addition, the weaknesses found in McCollum's proposal all relate to technical evaluation criteria or subcriteria set out in the RFP. This is not disputed by McCollum. What the record establishes instead is only a disagreement over BLM's judgment, which, as we indicated above, is not sufficient to satisfy the protester's burden of establishing improper technical evaluation. This basis of McCollum's protest is denied.

Further, we will not consider the other protest bases raised by McCollum. Under our Bid Protest Regulations, a protest based upon an alleged impropriety apparent from the face of the RFP must be filed before the time set for closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1988). McCollum's contention that the solicitation should have been set aside for small businesses is an alleged solicitation impropriety since it was clear from the face of the RFP that the solicitation was issued on an unrestricted basis. This contention is, therefore, dismissed as untimely. See Lundin Constr. Co., B-226209, B-226210, Feb. 20, 1987, 87-1 CPD ¶ 198. With respect to McCollum's request for an investigation to determine if BLM's procurement practices are discriminatory, we do not conduct investigations pursuant to our bid protest function for the purpose of establishing

the validity of protesters' speculative statements. See
Electra-Motion, Inc., B-229671, Dec. 10, 1987, 87-2 CPD
¶ 581. In addition, the record in this protest reveals no
evidence of discrimination in this procurement.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel