

Maeder



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Counseling Services Associates

**File:** B-241349

**Date:** February 4, 1991

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Tom MacDermant for the protester.  
Susan F. Cato for Child Abuse Prevention Association, an interested party.  
Major R.L. Van Saghi, Esq., and George N. Brezna, Esq., United States Marine Corps, for the agency.  
Jacqueline Maeder, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Allegation that award was improper because agency personnel provided awardee with early notification of the solicitation and gave awardee information about the procurement is denied where record establishes that agency reasonably determined that protester's proposal was technically unacceptable for reasons uniquely related to the protester's experience and that agency contacts with awardee concerned only the firm's interest in the project and disclosed no privileged information.

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## DECISION

Counseling Services Associates protests the award of a contract to the Child Abuse Prevention Association (CAPA) under request for proposals (RFP) No. M00263-90-R-0002, issued by the Marine Corps Recruit Depot, Parris Island, South Carolina, for the establishment of a Parent Support Program to serve the Recruit Depot, the Marine Corps Air Station, and the Beaufort Naval Hospital at Parris Island. Counseling Services protests generally that it was at an unfair competitive disadvantage because agency personnel provided the awardee with early notification of the solicitation and information about the procurement.

We deny the protest.

Under this RFP, the Marine Corps is seeking a contractor to establish and implement a 1-year support program for high-risk new parents. Parent Support Program personnel will work


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with identified high-risk Marine Corps and Navy families to reduce the potential of child abuse and/or neglect and to increase support services and community networks. The program would serve the three commands noted above and function under the auspices of the Marine Corps Air Station Family Service Center.

The RFP was issued following a preproposal conference, which both the protester and the awardee attended. The solicitation indicated that award would be based on both technical merit and price, but that the technical factors were substantially more significant than price. Technical factors included the offeror's understanding of the requirements of the solicitation and the offeror's ability to perform the work, including its personnel qualifications, agency (organizational) experience and management plan. The RFP specifically required offerors to submit resumes for all personnel who would work on the contract and required offerors to have "5 years experience in the management and administration of human social service programs." Six prospective contractors were solicited and both Counseling Services and CAPA submitted proposals.

A Technical Evaluation Board, comprised of three members, evaluated initial proposals and determined that the CAPA proposal was technically acceptable and that the Counseling Services' proposal was reasonably susceptible of being made technically acceptable. The Board had concerns about the experience and availability of the protester's proposed personnel, its experience as an agency, and its management plan. The Board asked questions of both offerors concerning their technical and price proposals, specifically noting in the request directed to Counseling Services that: it did not appear to have the minimum required 5 years experience; it needed to document its specific experience as it related to the RFP's "Scope of Program"; and it needed to "specify level of experience in program management as it applies to this solicitation."

Both offerors submitted responses. Counseling Services, a sole proprietorship which had been in existence for only 1



offeror's experience.<sup>1/</sup> Nevertheless, the Board concluded that the resume of the owner/counselor did not indicate the required 5 years experience in direct program management or administration in child abuse or neglect. Consequently, Counseling Services was found technically unacceptable and award was made to CAPA on September 21. Counseling Services filed its protest with our Office on September 27 and performance has been stayed pending the resolution of this protest.

Counseling Services first contends that it was at an unfair competitive disadvantage in this procurement because CAPA received early notification of the procurement. The circumstances to which the protester refers is shown by the record to have been a telephone call made several months before the solicitation was issued, in which the Program Manager of the Air Station's Family Service Center spoke to CAPA's Executive Director "regarding a program he was developing," asked if CAPA would be interested in bidding on such a project and inquired as to addresses and telephone numbers of other child abuse prevention programs in South Carolina. The Family Service Center's Program Manager also served as the Chair of the Technical Evaluation Board which evaluated the proposals submitted under this solicitation, and is a former CAPA board member.<sup>2/</sup> CAPA's Executive Director states that at a subsequent board meeting, she advised members "of the possibility of a program being developed" and asked for, and was granted, approval to bid on any such project.

Second, Counseling Services alleges that agency personnel improperly released information about the Parent Support Program to CAPA because the Executive Director of CAPA was overheard in telephone conversations, prior to the date for submission of initial offers, with an employee of the Family Service Center at the Recruit Depot, the Social Service

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<sup>1/</sup> The protester has argued that the Marine Corps defined "agency" so as to require an organization composed of more than one person and thus discriminated against the protester as a sole proprietorship. Since the record shows that the agency evaluators did, in fact, credit the protester's organization (agency) with its owner's experience, this argument is without merit.

<sup>2/</sup> The agency states that CAPA, a nonprofit organization, provides counseling services for Beaufort County and because of this role and the number of Marine dependents in the county, it is important for the Marine Corps to participate in CAPA meetings. Each command--the Naval Hospital, the Air Station, and the Recruit Depot--has an assigned representative that serves as a non-voting member of the CAPA board.

Representative.<sup>3/</sup> The Social Service Representative is also, according to the protester, a member of the CAPA board. The protester asserts that the Social Service Representative gave advice to the CAPA director "on the submission of the offer" and that this "appears to be a conflict of interest and again constitutes an unfair advantage to CAPA."<sup>4/</sup>

Initially, we note that Counseling Services was eliminated from the competition as technically unacceptable because it did not have the required 5 years program management experience. The protester does not rebut this finding. We note that the program management experience requirement was critical and the lack of such experience cannot be affected by any advance notification of or information about the procurement CAPA may have gained from agency personnel.

The record does show that some time prior to the issuance of the solicitation, CAPA was informed by the Air Station Family Service Center's Program Manager of the possibility of the Parent Support Program. The record indicates, however, that the Program Manager's conversation with CAPA's Executive Director was in the context of determining if CAPA would be interested in submitting an offer on the project as well as identifying other potential offerors. We have held that discussions with a prospective contractor concerning the firm's qualifications and interest in a project does not evidence bias or constitute an impropriety on the part of the agency. Power Line Models, Inc., B-220381, Feb. 28, 1986, 86-1 CPD ¶ 208. Here, there is no evidence that CAPA, by learning of a potential program earlier than other competitors, gained access to information not available to those other competitors. Indeed, the record indicates that CAPA was informed only of the possibility of a program and that it, like the protester, first learned the specifics of the

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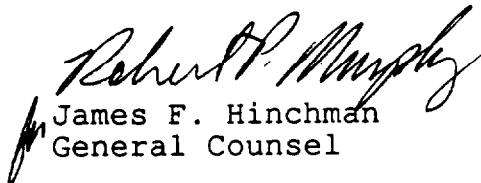
<sup>3/</sup> This employee is called the Family Advocate by the protester, the Social Service Representative by the agency, and the Family Advocacy Coordinator in her own affidavit. For consistency, we will refer to this officer and her position as the Social Service Representative.

<sup>4/</sup> Initially, Counseling Services also complained that CAPA's low offer evidenced its "failure to comprehend the complexity of the contract requirements" and placed its ability to complete the contract work in jeopardy since CAPA would have difficulty attracting and retaining "competent professional service employees." In its comments to the agency's report, however, the protester did not attempt to rebut the agency's response to this allegation; therefore, we consider Counseling Services to have abandoned this basis of protest. Ross Aviation Inc., B-236952, Jan. 22, 1990, 90-1 CPD ¶ 83.

agency's requirements at the preproposal conference. Moreover, as noted above, this advance notification is not relevant to the agency's reasonable determination that the protester's proposal was technically unacceptable for reasons relating to its own experience.

Similarly, we cannot conclude that any unfair advantage accrued to CAPA by virtue of the telephone contacts CAPA's Executive Director had with the Recruit Depot's Social Service Representative. These contacts appear to have been inquiries as to the process for completing a price proposal and as to salaries paid to federal and state employees for similar positions. Moreover, the Marine Corps has furnished our Office with an affidavit from the Social Service Representative stating that she "did not at any time discuss or disclose source selection information or privileged information" concerning the solicitation to CAPA's Executive Director. The Social Service Representative was not a member of the Technical Evaluation Board and did not participate in the recommendation for award. These facts do not demonstrate that any action of the Social Service Representative resulted in prejudice for or on behalf of CAPA or that CAPA's Executive Director was accorded access to inside agency information concerning the procurement. Consequently, this allegation does not provide a basis on which to question the award to CAPA. See AT&T Technologies, Inc., B-237069, Jan. 26, 1990, 90-1 CPD ¶ 114.

Accordingly, the protest is denied.

  
James F. Hinchman  
General Counsel