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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Mediq Equipment & Maintenance Services, Inc.

File: B-242222

Date: March 26, 1991

Lively Williams for the protester.
E.L. Harper, Department of Veterans Affairs, for the agency.
Linda S. Lebowitz, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency reasonably awarded contract to higher technically rated, higher-priced offeror for scanner maintenance services where awardee's ability to satisfy solicitation requirements for responding on-site within 2 hours of notification of equipment failure and for repairing scanner so that its downtime did not exceed 8 consecutive working hours was superior to protester's ability to do so.

DECISION

Mediq Equipment & Maintenance Services, Inc. protests the award of a contract to General Electric Company (GE) under request for proposals (RFP) No. 614-14-90, issued by the Department of Veterans Affairs (VA) for maintenance services for a GE Model 8800 CT scanner located at the VA Medical Center, Memphis, Tennessee. Mediq essentially challenges the agency's evaluation of its proposal and argues that as the low-priced offeror, the agency should have awarded it the contract.

We deny the protest.

The solicitation, issued on August 22, 1990, contemplated the award of a firm, fixed-price contract for scanner maintenance services for the base year and 2 option years. The statement of work (SOW) required the contractor to perform two basic services--scheduled preventive maintenance and unscheduled remedial maintenance and repair as a result of equipment failure--on the scanner which was approaching the end of its useful life and which was in frequent need of repair. Scheduled preventive maintenance, performed on a semimonthly basis, included requirements for the contractor to inspect and

calibrate the scanner and to upgrade the scanner by making state-of-the-art software modifications. Remedial maintenance and repair included requirements for the contractor to respond on-site at the Memphis VA Medical Center within 2 hours of notification of the need for repairs to the scanner and for the contractor to maintain a sufficient stock of parts and qualified service personnel to ensure that the scanner's downtime would not exceed 8 consecutive working hours for each individual equipment failure.

The RFP stated that the government would award a contract to the responsible offeror whose offer was determined to be the most advantageous to the government, cost or price and other factors considered. The RFP contained the following three evaluation factors and the maximum point values for each factor: (1) technical approach (35); (2) organization, personnel, and facilities (35); and (3) cost (30). With respect to the technical approach factor, an offeror was required to demonstrate its understanding of the SOW by submitting a plan for performing both scheduled and unscheduled maintenance services. In this plan, an offeror was to describe how it intended to meet the 2-hour on-site response time requirement and how it intended to repair the scanner so that its downtime would not exceed a maximum of 8 hours. An offeror also was required to address its quality control program. With respect to the second factor, an offeror was required to discuss its organizational structure and management practices, to submit resumes detailing the qualifications of key personnel (specifically, the service manager and the senior service representative), to describe the facilities which would be used to support the maintenance service function, and to provide current references. Finally, with respect to the cost factor, the solicitation stated that for evaluation purposes, the total price for all options would be added to the total price for the basic requirement, and that the low-priced offeror would receive the maximum number of points (30) for cost, with the other offerors receiving a percentage of these points based on a ratio of the low-priced offeror's price to the other offerors' prices.

Four firms submitted initial proposals by the amended closing date of October 3. After the initial evaluation, the agency determined that two firms--Mediq and GE, the incumbent--were within the competitive range. By letter dated October 25 from the agency to both firms within the competitive range, written discussions were held and best and final offers (BAFOs) were requested with a closing date of October 29.

After the evaluation of BAFOs, Mediq and GE received the following scores:

	<u>Mediq</u>	<u>GE</u>
Technical	24.25	32.75
Management	27	34
Cost	<u>30</u> (\$79,490)	<u>14.70</u> (\$156,000) <u>1/</u>
Total	81.25	81.45

Although Mediq's proposal was priced significantly less than GE's proposal, the agency considered GE to be technically superior to Mediq. Therefore, on November 26, the agency awarded a contract to GE, the slightly higher combined scored offeror. Mediq filed this protest on December 3.

Mediq challenges the agency's evaluation of its proposal and argues that as the low-priced offeror, the agency should have awarded it the contract. Mediq maintains that the agency had no reasonable basis for awarding the contract to GE, the higher-priced offeror.

We will examine an agency's evaluation to ensure that it was reasonable and consistent with the evaluation criteria stated in the RFP. See Research Analysis and Maintenance, Inc., B-239223, Aug. 10, 1990, 90-2 CPD ¶ 129. A protester's disagreement with the agency's evaluation is itself not sufficient to establish that the agency acted unreasonably. Id. Here, after reviewing the record, we conclude that the evaluation was reasonable and in accordance with the RFP's stated evaluation scheme.

Concerning the technical factor, the agency found that both Mediq and GE had a clear understanding of the scheduled preventive maintenance requirement. However, for the unscheduled remedial maintenance and repair requirement, the agency found that Mediq's ability to respond on-site within 2 hours of notification that the scanner had suffered specific equipment failure and needed repair was less reliable than GE's ability to respond on-site within 2 hours. Specifically, Mediq proposed to place one primary engineer in Memphis to service the scanner, and to have available a secondary engineer from Grenada, Mississippi who could respond on-site in Memphis within 2 hours of notification. However, Mediq

1/ For evaluation purposes, the agency did add the total price for all options to the total price for the basic requirement; the prices shown above reflect each offeror's price for 10 months of the base year which was shortened by the delay in making the award. The record reflects that the government estimate for the full base year was \$177,251.

stated in its proposal that it contemplated situations where geography or distance would make the "2 or 3 hour response impossible," and Mediq would have to obtain the agency's approval for a longer response time. Because of the doubt created by Mediq in its proposal concerning its ability to respond on-site within 2 hours, the agency concluded that Mediq could satisfy the 2-hour on-site response time requirement in most, but not all, situations. On the other hand, GE had available six service representatives who work out of its Memphis field service office and two service representatives who work within 2 hours of Memphis. We believe the agency reasonably concluded that GE was more likely than Mediq to satisfy the 2-hour on-site response time requirement because it had available a larger pool of local service personnel.

In addition, the agency found that Mediq's ability to repair the scanner so that its downtime would not exceed the maximum 8-hour requirement was questionable. Specifically, with respect to the requirement that a contractor maintain a sufficient stock of parts in order to keep the scanner's downtime to a minimum, Mediq stated in its proposal that it would ship parts as soon as possible and according to priority instructions. Mediq proposed to send emergency, priority parts from its Texas parts depot to Memphis using airline counter-to-counter service. Mediq would send other non-priority parts to Memphis by overnight air or by some other form of transportation. In contrast, GE maintains an inventory of 85 percent of commonly needed parts in Memphis. GE stated that if a part is not available in Memphis, it would obtain the part overnight from another parts inventory location. We believe the agency reasonably concluded that to the extent downtime could be minimized because of a contractor's access to parts, GE was more qualified than Mediq because GE had a large local inventory of parts while Mediq's inventory of parts was located in another state and would have to be transported to Memphis.

With respect to the actual downtime requirement, Mediq also outlined in its proposal its procedures for escalating a service call from the service engineer ultimately to Mediq's president when the scanner is out of service for a period of time ranging from 4 hours to 5 days. Mediq stated that since it did not know the agency's current downtime, "a more exact plan [for meeting the 8-hour downtime requirement] would not be possible." While GE stated it generally could meet the maximum 8-hour downtime requirement for each equipment failure, it also stated that there may be an occasion where the downtime would exceed 8 hours. For this reason, GE accepted an average, not a maximum, 8-hour downtime for each equipment failure.

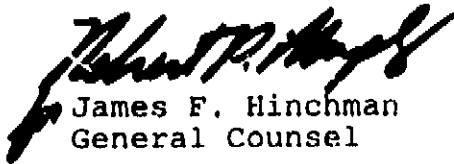
Here, the RFP required a contractor to repair the scanner so that its downtime would not exceed a maximum of 8 hours, not some vague or unknown period of time as suggested by Mediq or an average of 8 hours as proposed by GE. The record shows that the agency waived this requirement because neither Mediq nor GE proposed a maximum 8-hour downtime. Although this was a mandatory requirement and the RFP did not provide that the agency was to determine which of the nonconforming offerors came closer to satisfying the requirement, generally, if the acceptance of an offer will meet the agency's needs, and no offeror will thereby be prejudiced, award properly may be made. See, e.g., Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324; Hamilton Prods. Group, Inc., B-233067, Oct. 24, 1988, 88-2 CPD ¶ 387. Since the agency waived this requirement for both Mediq and GE, equal competition was not compromised, neither contractor was prejudiced, and there is no suggestion in the record that any potential offeror elected not to submit a proposal because of the 8 hour requirement. Therefore, we find the agency reasonably concluded that, in contrast to Mediq's failure to make any assurances concerning the 8-hour downtime requirement, GE offered greater assurance of satisfying this requirement because it maintained a significant local inventory of parts and, for all but an occasional equipment failure, GE agreed it could repair the scanner so that it would not be out of service for longer than 8 hours.

Concerning the management factor, the agency generally found that both Mediq and GE had acceptable organizational structures and management practices, and based on the resumes submitted, both Mediq and GE proposed qualified key personnel. In addition, both Mediq and GE provided extensive lists of references who reported satisfactory and acceptable performance of maintenance services by each respective firm. The agency specifically noted its satisfaction with GE's reliable performance of scanner maintenance services as the incumbent at the VA Medical Center in Memphis.

In short, after reviewing the record, we find that the evaluation of Mediq's and GE's proposals was reasonable and in accordance with the RFP's stated evaluation scheme. The agency reasonably determined that GE's proposal was technically superior based on GE's greater ability, due to the availability of a larger service representative pool in Memphis, to respond on-site within 2 hours of notification of an equipment failure, and because GE maintained a significant local inventory of parts, to repair the scanner so that its downtime would not exceed 8 hours. While Mediq believes the agency favored GE only because it had a local service office in Memphis, the record shows that GE submitted the better proposal. Given the fact that the scanner, a medical diagnostic device, was approaching the end of its useful life

and required frequent repair, we cannot say that the agency's decision to pay a price premium to GE in order to ensure prompt and reliable repair was unreasonable. We therefore have no basis to question the agency's award of the contract to GE, the higher technically rated, higher-priced offeror. See Imaging Equip. Serv., Inc., B-238669.2, Oct. 1, 1990, 90-2 CPD ¶ 260.

The protest is denied.


James F. Hinchman
General Counsel