



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Culver Health Corporation

File: B-242902

Date: June 10, 1991

John M. Taffany, Esq., Bailey & Shaw, P.C., for Culver Health Corporation, the protester.

Thomas M. Botts for National Emergency Services, Inc., an interested party.

Herbert F. Kelley, Jr., Esq., and Robert D. Hamel, Esq., Department of the Army, for the agency.

Katherine I. Kiback, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Award to higher-priced offeror is proper where the protester was notified in discussions about the agency's concern regarding its low compensation rates, particularly as it affects retention and recruitment, and the protester submitted only undocumented general statements in support of its compensation rates.

2. Agency conducted meaningful discussions where it advised the protester of deficiencies in its proposal; procuring agency is not required to notify offerors of deficiencies remaining in their best and final offers or conduct successive rounds of discussions until such deficiencies are corrected.

DECISION

Culver Health Corporation protests the award of a contract to NES Government Services, Inc. under request for proposals (RFP) No. DADA10-90-R-0029, issued by the United States Army Health Services Command for the healthcare services of General Medical Officers at Army Medical Training Facilities across the United States. The award to NES was for Region II, which includes eight locations in the Western United States.^{1/} Culver disputes the agency's conclusion that its price was

^{1/} Trauma Service Group has protested the award for the services for Region I under the same solicitation. That protest is the subject of a separate decision under file no. B-242902.2.

unrealistic and argues that it should have received the award as the low-priced technically acceptable offeror.

We deny the protest.

On May 22, 1990, the Army issued this solicitation for General Medical Officer's services in Region I, Eastern United States, and Region II, for a base period and 4 option years. The solicitation contemplated the award of one or two fixed-price indefinite quantity contracts for the two regions.

The RFP listed three evaluation factors, with subfactors as follows:

Factor 1 Personnel Qualifications

- a. Management Qualifications
- b. Employee/Subcontractor Qualifications

Factor 2 Business Management/Understanding of the Requirement/Commitment

- a. Recruitment
- b. Substitute Coverage
- c. Retention

Factor 3 Cost/Price

Price will be evaluated, but not scored, for reasonableness and realism.^{2/}

The solicitation stated that Factors 1 and 2 were to be of equal importance, as were the subfactors of 1 and 2, and further provided that "among those offers determined to be technically acceptable in each region, award will be made to the offeror who offers the lowest reasonable realistic price and is deemed responsible." Offers were to be priced based on a per hour unit price and a total price based upon the estimated total hours needed as set forth in the RFP for each location for the base period and each of the 4 option years. In addition, the RFP provided that offerors were to submit a separate breakdown of the prices by cost elements such as direct labor, overhead, general and administrative, and profit.

^{2/} In accordance with the evaluation plan the evaluators did not score the proposals but rated them under Factors 1 and 2 as "Technically Acceptable," "Susceptible to being made Technically Acceptable" or "Technically Unacceptable."

Fifteen offerors responded to the solicitation by the June 22 due date for proposals. Technical evaluations were conducted and Culver's proposal was considered to be acceptable and determined to be within the competitive range, as was NES'. On August 21, Culver and the other competitive range offerors were sent discussion letters raising a number of technical and price concerns.

Revised proposals were reviewed by the technical evaluation team and on September 5 a request for best and final offers (BAFO) was sent to all offerors, including Culver, remaining under consideration for award. The initial BAFO's included a Region II offer from Culver with a total evaluated price, including the option periods, of \$5,987,786, the lowest received, and one from NES at \$7,215,410. After reviewing the BAFOs, the evaluators found that they had not informed some of the offerors of all the deficiencies in their offers, and therefore discussions were reopened. In the September 28 discussion letter to Culver, the agency expressed for the first time its concern regarding the protester's compensation rates by stating: "At this time, the compensation rates you proposed appear to be unrealistically low. Request a complete review of your offer with cost realism in mind."

After the responses were evaluated and some changes were made to the agency's requirements, the agency solicited a second round of BAFOs on October 23. In response, Culver submitted an offer priced at \$6,300,714, while NES did not change its price.

Subsequently, the agency again amended its requirements and based on those changed needs sent the offerors a third request for BAFOs dated December 12. In response, both Culver and NES submitted offers which did not change their prior prices. So at this point, Culver's was the lowest offer at a total price of \$6,300,714, while NES' \$7,215,410 offer was the next low of the seven received. Both of the offers were considered acceptable under the two technical evaluation factors.

The evaluators were, however, concerned that Culver's proposed hourly physician compensation for the Fort Hood, Carson, Polk, and Ord locations was significantly below the agency's estimates for these locations and thus recruitment and retention of physicians would become a problem. Further, the evaluators noted that Culver's total amount allowed for compensation in Region II, \$5,167,959, was significantly lower than the agency's estimate of \$5,860,900 and that its total price of \$6,300,714 was also much lower than the overall agency estimate of \$8,099,658 for Region II. Consequently, the evaluators concluded that Culver's "overall rates are not realistic and would have an adverse effect on much needed

performance" and the agency rejected the offer as unrealistically priced.

NES' compensation total of \$6,059,490 was higher than the government's \$5,860,900 estimate and it was more in line with the other offerors' and was considered by the evaluators to be realistic, as was its \$7,215,410 overall price. Thus, it was awarded the contract for Region II as the low acceptable offeror with realistic pricing.

Culver argues that its offer was improperly evaluated. It maintains that its prices and compensation rates were compiled after an extensive industry evaluation and discussions with prospective physicians and were realistic. The protester contends that because this is a fixed-price contract, all of the risk of Culver's alleged low prices would fall entirely on the contractor and that it was simply not reasonable to reject its low offer. Culver also notes that after the agency expressed its concern with the firm's rates in its September 28 discussion letter, it never brought the matter up again despite requesting two additional BAFOs. Finally, the protester argues that the contracting officer in evaluating the Region II proposals improperly relied upon the government estimates which it points out were considered by the evaluators to be questionable in Region I due to the fact that all of the offers received for that region were below the estimate.^{3/}

"Cost realism" ordinarily is not considered in the evaluation regarding the award of a fixed-price contract, since as the protester points out, the contract places upon the contractor the risk and responsibility for loss. Agencies may, nonetheless, in their discretion provide for a realism analysis in the solicitation of fixed-price proposals. The risk of poor performance when a contractor is forced to provide services at little or no profit or with an undercompensated workforce is a legitimate concern in the evaluation of proposals. See

^{3/} The protester also argued in its initial protest that the agency had found it nonresponsive. The agency has responded in its report that references concerning a problem with past performance contained in negotiation letters and the notification of award letter to the protester were in error. The agency states that at no time during the evaluation process did the contracting officer consider the responsibility issue a factor in determining that Culver's proposal was unrealistically low. This statement is supported by the evaluation documents that clearly demonstrate that the offeror's low compensation rates were the factor that prevented Culver from receiving the award. Thus, we need not consider this issue further.

Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441. We will review the agency's realism evaluation to determine that it was reasonable and consistent with the RFP evaluation criteria. Id.

Here, we find that the agency's judgment that Culver's relatively low physician compensation rates posed an unacceptable risk of poor performance was reasonable.

In response to the agency's September 28, inquiry concerning Culver's low compensation rates, the firm chose, in essence, to continue with its relatively low compensation plan. It explained in general terms that it believed its rates were "competitive" and it envisioned no problems securing and retaining personnel at those rates. Culver did not document its statements but only explained generally that it had discussed compensation with local clinics, recruiters and "various societies."

When the agency compared Culver's compensation rates with the government estimates and the rates offered by the other offerors, it found that Culver's rates were significantly lower, especially in the Fort Hood, Carson, Polk, and Ord locations. While it is true as the protester points out that the evaluators themselves questioned the validity of similar government compensation estimates for the same services in the Region I locations, their conclusion was based on the range of the offers received for Region I. Here, under Region II, the offers received were fairly evenly distributed above and below the agency's overall estimate and in any event, the agency's analyses did not consist of a mechanical comparison with the government's estimates. They also took into consideration the rates proposed by NES and those paid by that firm under a current contract for similar services.


In view of the fact that Culver's total overall compensation for all locations was considerably below the government's estimate, as well as the compensation plans of all the other offerors, and considering the lack of a substantive explanation as to the derivation of these low rates and as to their impact, we think that the agency's concerns that the Culver proposal represented a significant risk of poor performance was justified. Since the agency did not find that the low price offered by Culver was realistic, it was proper under the RFP evaluation scheme which provided that realism of the price would be evaluated and that award would be made to the acceptable offeror proposing the lowest "realistic" price, for the award to be made to the next low offeror whose price was considered realistic.

Finally, the protester argues that the last two requests for BAFOs never indicated any remaining concern regarding Culver's prices, so that the company was led to conclude that the agency's concerns had been adequately answered in its response to the agency's September 28 discussion letter.

The requirement for meaningful discussions includes advising offerors of deficiencies in their proposals and offering them the opportunity to satisfy the government's requirements through the submission of revised proposals. Space Servs. Inc. of Am.; Space Vector Corp., B-237986; B-237986.2, Apr. 16, 1990, 90-1 CPD ¶ 392. Agencies, however, are not required to notify offerors of deficiencies remaining in their proposals or to conduct successive rounds of discussions until omissions are corrected. Wyle Laboratories, B-239671, Sept. 19, 1990, 90-2 CPD ¶ 231.

The agency's September 28 letter, which specifically pointed out that Culver's compensation rates appeared unrealistic, low, directed Culver into the area of its proposal that agency considered deficient. Culver responded with some minor adjustments to its compensation rates and overall price and its general explanation of the rates. Although the Army concluded that Culver's response did not alleviate its concerns, it was under no obligation to repeatedly point this out to Culver. Wyle Laboratories, B-239671, supra.

The protest is denied.


for James F. Hinchman
General Counsel