



Comptroller General
of the United States

2311810

Washington, D.C. 20548

Decision

Matter of: AmerInd, Inc.

File: B-253751

Date: October 19, 1993

James L. Feldesman, Esq., and Edward T. Waters, Esq.,
Feldesman, Tucker, Leifer, Fidell & Bank, for the protester.
Claude P. Goddard, Jr., Esq., Jenner & Block, for Mastech
Systems Corporation, an interested party.
Colonel Gregory E. Smith, and Edward L. Williamson, Esq.,
Department of the Army, for the agency.
Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest that awardee's technical approach was noncompliant with the solicitation requirements because it relied heavily on the use of automatic data processing tools is denied where the solicitation identified functional tasks to be performed and did not mandate any particular technical approach to be employed in accomplishing those tasks.
2. Because the composition of the technical evaluation panel is within the discretion of the contracting activity, allegation that agency's evaluators were not qualified to assess the technical aspects of proposals will not be considered where protester makes no showing of fraud, conflict of interest, or actual bias on the part of the evaluators.
3. Agency's verification of the existence of awardee's proposed automatic data processing tools prior to request for best and final offers did not constitute improper discussions.

DECISION

AmerInd, Inc. protests the Department of the Army's award of a contract to Mastech Systems Corporation under request for proposals (RFP) No. MDA903-92-R-0018, for management and technical services to support the composite health care system (CHCS) for the Defense Medical Support Activity

(DMSA),¹ AmerInd asserts that Mastech's proposal failed to comply with the solicitation requirements; that the agency's evaluators were not technically qualified; and that the agency engaged in improper discussions with Mastech.

We deny the protest.

BACKGROUND

On February 10, 1992, the agency issued the subject RFP as a set-aside for small, disadvantaged businesses (SDB). Section C of the RFP stated that the purpose of the acquisition was to "obtain comprehensive management and technical support services for the CHCS Program Office, an organization under the DMSA." This statement was followed by portions of DOD Directive 6000.5 which describe DMSA's mission as follows:

"Improve the effectiveness and economy of health care delivery administered by the military departments, through the application of standardized automatic data processing techniques to health care information systems.

"Adapt advanced data automation technology to health care delivery, and streamline, modernize and standardize DOD medical information systems."

Section C of the RFP also identified various tasks and subtasks that the contractor would be required to perform, including: "operate a database for tracking deliverables submitted by the CHCS prime contractor"; "provide support for various systems engineering and development functions by analyzing functional and cost information"; "analyze and track components of the CHCS delivery order and contract execution documentation"; provide a range of financial management services for the CHCS project in accordance with [applicable DOD directives]; "provide cost projections and analyses"; and "maintain a database to track system change requests." As amended, the RFP called for submission of initial proposals by May 21.

By the closing date, Mastech, AmerInd, and five other offerors submitted initial proposals. Each of the SDB offerors' proposals identified a primary subcontractor on which the offeror would rely in performing the contract. AmerInd's proposal included the incumbent subcontractor and incorporated a personnel-intensive technical approach

¹DMSA is responsible for the acquisition, development, and installation of computer-supported medical information systems in Department of Defense (DOD) medical facilities.

similar to the approach used by proposed subcontractor under the predecessor contract. In contrast to AmerInd's personnel-intensive approach, Mastech's proposed technical approach emphasized a greater use of automatic data processing tools.

The initial technical proposals were evaluated by the agency with the following results:

<u>Offeror</u>	<u>Technical Score</u>
Mastech	698
Offeror A	565
Offeror B	563
Offeror C	439
AmerInd	417
Offeror D	350
Offeror F	90

Based on this initial evaluation, the proposals submitted by offerors D and F were eliminated from the competitive range. On November 16, the agency sent written questions to each of the competitive range offerors, identifying areas in their respective proposals that were deficient or needed clarification; the offerors provided written responses by December 4.

Beginning on February 24, oral discussions were conducted with the competitive range offerors. During these discussions, the agency advised Mastech that it needed to verify the existence of certain ADP tools on which Mastech's proposal relied. On March 3, the agency visited Mastech's proposed subcontractor's site, verifying the existence and capabilities of the ADP tools that Mastech had proposed.

On April 1, the agency requested that best and final offers (BAFO) be submitted by April 6.² BAFOs were timely submitted and subsequently evaluated, resulting in the following technical scores and evaluated costs:

<u>Offeror</u>	<u>Technical Score</u>	<u>Evaluated Cost</u>
Mastech	797	\$21,414,350
Offeror B	612	20,686,602
Offeror A	597	15,364,912
Offeror C	569	22,094,255
AmerInd	522	21,492,572

²At AmerInd's request, the closing date was extended to April 12.

On April 16, the source selection official concluded that award of a contract to Mastech was in the best interest of the government, cost and technical factors considered. This protest followed.

DISCUSSION

AmerInd first protests that Mastech's technical approach should have been rejected as unacceptable because the RFP contemplated contract performance by people, not "high-tech computerized systems." Specifically, AmerInd asserts that the "primary focus" of the RFP was "to procure services provided by individuals, not software and related items," adding that "the software or systems [the proposed] individuals might employ are of little consequence." AmerInd further maintains that "the RFP was clear in soliciting a continuation of the services currently being provided," arguing that only its proposal, which offered to provide "flesh and blood individuals and not 'High-Tech' computerized systems to manage the CHCS," complied with the solicitation requirements.

The agency points out that the RFP did not specify any particular approach to accomplishing the various tasks identified in Section C of the solicitation. Rather, as discussed above, the RFP identified various functional objectives, which Mastech's proposal offered to perform--albeit through a more "high-tech" approach than that proposed by AmerInd. The agency adds that, contrary to AmerInd's assertion that the protested RFP sought "a continuation of the services currently being provided," the tasks to be performed in the protested procurement are significantly different from those required under the preceding contract. Among other things, the new RFP added specific requirements, including automated financial systems support and configuration management, and deleted other requirements, including tasks that had been performed on a one-time basis such as development of administrative procedures and a CHCS management workplan. The agency explains that the RFP for the preceding contract contemplated development of administrative procedures and management workplans, while the new SOW contemplated management of a deployed system.

The record does not support AmerInd's assertion that the RFP mandated a personnel-intensive approach similar to that employed under the preceding contract. As discussed above, Section C of the RFP identified various tasks which the successful contractor would be required to perform; however, the RFP did not require any particular approach to be employed. Thus, we see no basis for AmerInd's argument that Mastech should not have been permitted to propose a technical approach differing from the personnel-intensive

approach previously employed by AmerInd's subcontractor or that Mastech's approach was noncompliant with the solicitation requirements.

AmerInd next protests that the agency's evaluators were not qualified to assess the technical merits of the proposals. In response, the agency submitted the resumes of the five technical evaluators. These resumes show that all five of the evaluators work in the office of the Assistant Secretary of Defense for Health Affairs and collectively have more than 100 years of experience in matters directly relating to the solicitation tasks at issue in this procurement.

The selection of individuals to serve as proposal evaluators is essentially a matter within the discretion of the agency. Our Office will decline to appraise the qualifications of such individuals absent a showing of possible fraud, conflict of interest, or actual bias on the part of the evaluators. ACM, Inc., B-225589 et al., May 7, 1987, 87-1 CPD ¶ 486. Since AmerInd has made no showing of fraud, conflict of interest or actual bias, we will not consider its challenge to the qualifications of the agency evaluators.³

Finally, AmerInd protests that the agency engaged in improper unequal discussions in that, prior to requesting BAFOs, the agency visited Mastech's proposed subcontractor site, but did not similarly visit the site of AmerInd's proposed subcontractor.

The agency responds that it was familiar with the capabilities and technology proposed by AmerInd because AmerInd's proposal was based on the approach and technology used by the incumbent subcontractor while, in contrast, it needed to verify the existence and capabilities of the ADP tools on which Mastech's proposal relied.

In negotiated procurements, agencies are generally required to hold discussions with all competitive range offerors. Proprietary Software Sys., B-228395, Feb. 12, 1988, 88-1 CPD ¶ 143. Although discussions must provide offerors an equal opportunity to revise their proposals, the content and extent of discussions are matters within the discretion of the contracting officer and discussions with each offeror need not be identical; rather, a procuring agency should tailor its discussions to each offeror since the need for

³We note that AmerInd's objection seems to be that the evaluators' experience is primarily in programming rather than in CHCS matters, when in fact, it is clear from the evaluators' resumes that they have extensive experience in both areas.

clarification or revision will vary with the proposals. See, e.g., Indian Community Health Serv. Inc., B-217481, May 15, 1985, 85-1 CPD ¶ 547.

The record here provides no basis for AmerInd's assertion that the agency conducted prejudicially unequal discussions. As AmerInd itself points out, its proposal was based on the assumption that the RFP sought "a continuation of the services currently being provided." Consistent with that perception, AmerInd's proposal incorporated a technical approach similar to the one the incumbent contractor had pursued and utilized similar software and ADP systems with which the agency was very familiar. Accordingly, the agency had no need to verify the functionality or capabilities of the software and systems that AmerInd intended to use in its proposed approach. In this regard, AmerInd's proposal was not downgraded due to any agency uncertainty as to AmerInd's proposed approach; rather, the agency merely concluded that Mastech's proposed approach was superior. AmerInd's allegation that the agency engaged in unequal discussions is without merit.

The protest is denied.


for James F. Hinchman
General Counsel