



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Contract Health, Inc.

File: B-255165

Date: February 10, 1994

J. William Eshelman, Esq., Schmeltzer, Aptaker & Shepard, P.C., for the protester.
John W. Beason for America's Preferred Healthcare Corp., and Bayard A. Buchen, DDS, interested parties.
Eric Lile, Esq., and L. James Gardner, Esq., Department of the Navy, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that award was improper because the contracting officer knew, or should have known, that the awardee did not have authority to use the credentials package of a proposed dentist is denied where record does not establish that contracting officer had reason to suspect awardee had no authority to propose individual and, in fact, awardee received individual's credentials package from recruiter who had permission to use credentials package and individual discussed his employment for proposed position with awardee.

DECISION

American Contract Health, Inc. (ACH) protests the award of a contract to America's Preferred Healthcare Corporation (APHC) under request for proposals (RFP) No. N68836-93-R-0084, issued as a 100-percent small business set-aside, by the Department of the Navy. The contract is for the services of two clinical dentists, one for the dental clinic at Naval Station, Mayport, Florida and one for the dental clinic at the Naval Air Station, Cecil Field, Florida.

We deny the protest.

Under the RFP, the period of performance for Mayport was to be for a 1-year base period, beginning October 1, 1993, with three 1-year options. The period of performance for Cecil Field was also to be for a 1-year base period, beginning October 1, with two 1-year options.

The RFP called for award of a firm, fixed-price personal services contract to the responsible offeror whose offer, conforming to the solicitation, was determined to be the most advantageous to the government, cost and other factors considered. The RFP provided that technical factors were more important than price, but cautioned that price would become increasingly important as the technical merit of the proposals became equal. The evaluation factors were listed as follows, in descending order of importance:¹

- (1) Credentials (Experience)
- (2) Licenses
- (3) Continuing Education

The solicitation also incorporated by reference Federal Acquisition Regulation (FAR) § 52.215-34, "Evaluation of Offers for Multiple Awards." The solicitation provided for the substitution of key personnel and required the successful offeror, prior to award, to certify that personnel whose resumes were submitted for evaluation were available to perform under the contract.

Nine offers were received by the September 10 closing date. ACH and APHC submitted technical proposals both proposing the services of Dr. Johnny L. Smith. Dr. Bayard Buchen, who had previously been performing the dental services at Mayport under contract to ACH, submitted a proposal in his individual capacity. After reviewing the technical evaluation, the contracting officer determined that six of the offerors were technically equal, including the offers submitted by ACH, APHC, and Dr. Buchen. The contracting officer divided all offerors' technical scores by their total price (base plus option years) for both locations to determine the price per technical point.

Dr. Buchen received a perfect technical score and his price per technical point was the lowest for both Mayport and Cecil Field, even though in actual dollar prices he was low only for the Cecil Field location. APHC, having the second lowest price per technical point, submitted the lowest price for the Mayport location. Since Dr. Buchen could not perform at both locations, the contracting officer evaluated offers for the possibility of making multiple awards. FAR § 52.215-34 requires that offers be evaluated on the basis of advantages and disadvantages to the government that might result from making more than one

¹Credentials (experience) were twice as important as licenses, and licenses were twice as important as continuing education.

award. The FAR provision states that for the purpose of the multiple awards evaluation, \$500 is assumed to be the administrative cost to the government for issuing and administering each contract awarded under a solicitation and that individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the government, including the assumed administrative cost.

In performing the analysis for multiple awards, the contracting officer added \$1,000 administrative cost for making two awards to the price per technical point of those offers with the lowest price per technical point for the two locations (Dr. Buchen and APHC). Since the price per technical point, including administrative cost, was more than ACH's price per technical point for both locations, the contracting officer decided a single award to ACH was less costly to the government.

On September 27, the contracting officer contacted ACH to confirm on the availability of its candidates (Dr. Paul W. Huebner and Dr. Smith). Award was made to ACH on September 27. Immediately after award, ACH requested permission to substitute Dr. Buchen for Dr. Huebner because Dr. Huebner was seeking another position.

The contracting officer subsequently discovered that she had erroneously added the government's administrative cost for making multiple awards to the offerors' price per technical point, rather than to their total price, thus distorting the award results. After correcting her error, the contracting officer determined that two awards were less costly. She proposed to award to Dr. Buchen for the Cecil Field location and APHC for the Mayport location.

ACH's contract was terminated for convenience on September 29. Dr. Buchen was awarded the contract for the Cecil Field position.

Concerning the Mayport position, the contracting officer called Dr. Smith on September 29, and advised him that APHC, the new awardee at the Mayport location, had also proposed his services and therefore he would not be affected by the new award decision. Dr. Smith informed the contracting officer that he had not "knowingly authorized another company to submit his application." After talking to Dr. Smith, the contracting officer contacted APHC to inform it that it was in line for award based upon its offer of Dr. Smith. APHC stated that it would have to contact Dr. Smith about the October 1 start date as Dr. Smith was in Arizona. APHC later contacted the contracting officer and told her that Dr. Smith was available, but would need a few days to drive from Arizona to Florida.

Based on this information, on September 30, the contracting officer awarded the contract to APHC for the Mayport position. The contract changed the beginning of the period of performance from October 1 to October 6, to accommodate Dr. Smith's relocation from Arizona to Florida. On October 5, Dr. Smith advised the contracting officer he would not work for APHC and declined APHC's offer. ACH filed this protest on October 1.

The protester asserts that APHC was not in line for the Mayport award because the contracting officer knew, or should have known, prior to the award to APHC that APHC's proposal was based on the proposed employment of a dentist who had not authorized APHC to submit his credentials package for this particular solicitation. The protester cites our prior precedent that an offeror may not be awarded a contract where it submits the names of an individual for a key personnel position without permission and cannot provide a satisfactory explanation for use of the name. Ultra Tech. Corp., B-230309.6, Jan. 18, 1989, 89-1 CPD ¶ 42. We conclude that the award to APHC was proper.

At the time the award was made to APHC on September 29, the contracting officer had before her APHC's proposal containing a credentials package signed by Dr. Smith and also a letter of intent signed by Dr. Smith.² The protester maintains that prior to making the award to APHC, the contracting officer was notified by Dr. Smith that he had not authorized any firm other than ACH to submit his credentials for these two positions.

The record contains an affidavit from Dr. Smith in which he states that he informed the contracting officer on September 28 that he did not "knowingly authorize" another company to submit his credentials package for a dental position at Cecil Field or Mayport.³ According to the contracting officer, and not denied by Dr. Smith, Dr. Smith also stated in this conversation that he did not recognize the name APHC, but that he remembered submitting his

²The protester maintains that on the copy of the letter of intent signed by Dr. Smith which it received as the result of a Freedom of Information Act, 5 U.S.C. § 552 (1988) request, Dr. Smith's signature appears to be forged. However, at the time the contracting officer made her decision to award to APHC, she had no basis to question the authenticity of the letter of intent.

³The contracting officer states that this conversation occurred on September 29.

credentials to Med-National, Inc. The contracting officer thought Dr. Smith was confused and simply did not recall the name APHC. She suggested that Dr. Smith call both Med-National and APHC. The contracting officer also apparently advised Dr. Smith she would be calling APHC. Dr. Smith acknowledges in his affidavit that he was confused by the contracting officer's call, because he apparently was not aware that Med-National had given his credentials package to APHC.

In an affidavit, an official of Med-National states that while Dr. Smith may not have been informed that APHC had contracted with Med-National to recruit for them, he was informed that his resume would be used for the Cecil Field and Mayport positions as well as positions in Pensacola, Florida, and Fort Huachuca, Arizona.

We see no evidence that the contracting officer acted improperly based on her knowledge of the facts described above. Her call to APHC confirmed her view that APHC believed it had Dr. Smith's permission to propose his services based on his recruitment by Med-National. The record further shows that Dr. Smith never informed the contracting officer prior to the award that he would not work for APHC. Dr. Smith discussed the Mayport position with APHC for this contract, although he ultimately declined to accept the position. He only advised APHC the day before performance was to commence that he would not work for APHC when he returned the employment contract. Nothing in the record supports the protester's position that the contracting officer knew, or should have known, APHC had no authority to propose Dr. Smith. While there was some apparent confusion on Dr. Smith's part, we see no impropriety in the contracting officer's action.

Further, we conclude that APHC had a reasonable basis to believe that it had authority to submit Dr. Smith as a candidate for the Mayport position. The affidavit of the Med-National official states that APHC was advised that Dr. Smith was available as an additional candidate for APHC to use for the Mayport/Cecil Field positions and that Dr. Smith was willing to have his credentials furnished to APHC. Dr. Smith gave his employment package including a letter of intent to Med-National for use by Med-National. Dr. Smith does not argue that he imposed any restrictions on Med-National's use of Dr. Smith's credential's package. (The record does not suggest that either) Med-National or APHC knew of any question Dr. Smith may have had about the

use of his package in APHC's proposal. In fact, Dr. Smith did discuss his employment with APHC for the Mayport position.

The protest is denied.

Ronald Berger
Robert P. Murphy
Acting General Counsel