



Comptroller General
of the United States

455165

Washington, D.C. 20548

Decision

Matter of: Bioqual, Inc.
File: B-259732.2; B-259732.3
Date: May 15, 1995

Andrew E. Mishkin, Esq., Beveridge & Diamond, P.C., for the protester.
Michael G. Colvin, Department of Health and Human Services, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly applied unstated evaluation criterion by considering offerors' ability to rid a solicited mouse breeding facility of a particular undesirable organism is denied where this criterion was reasonably encompassed by a solicitation criterion concerning health monitoring.
2. Contracting agency was not required to discuss particular features of protester's proposal which were weak relative to the awardee's proposal, and would have acted improperly had it disclosed awardee's particular unique approach; agency need not discuss every element of a technically competitive proposal that receives less than the maximum possible score.

DECISION

Bioqual, Inc. protests the award of a contract to Taconic Farms, Inc. under request for proposals (RFP) No. NIAID-DIR-95-13, issued by the Department of Health and Human Services (HHS), for maintaining a mouse breeding facility. Bioqual argues that HHS used an undisclosed evaluation factor to evaluate proposals, and failed to conduct meaningful discussions.

We deny the protest.

BACKGROUND

The agency originally issued the RFP on May 13, 1994, seeking proposals for a cost-plus-fixed-fee contract for a 5-year term to maintain a mouse breeding barrier design facility for inbred, transgenic, and gene-targeted mice and to distribute these mice to National Institute of Allergy and Infectious Diseases Scientists, for use in immunology and infectious disease experiments. Section M of the RFP provided that technical factors were more important than cost, but that cost considerations would play a role in the award selection. In the event that proposals were judged to be approximately technically equal, the RFP provided that the estimated cost of performance could become the determining factor. Award was to be made to the responsible offeror whose proposal was determined to be most advantageous to the agency.

The RFP set forth the following technical evaluation factors: (1) documented prior experience and/or demonstrated ability to breed certain strains of mice, adequacy of staff, record maintenance, experience with embryo transfer and taking tissue samples (50 points); (2) documentation regarding adequacy of physical facilities and equipment to include mouse holding rooms in barrier design, air handling equipment, cage/rack washing equipment and laboratory work area (25 points); and (3) documented availability of professional veterinary services and animal husbandry supervision (25 points).

The agency received two proposals by the June 27 initial closing time. Bioqual's proposal received a total technical score of 75 points and Taconic's proposal received 77 points. Taconic's proposal provided for a significantly lower cost. Based on the results of the initial evaluation, the agency determined to include both proposals in the competitive range. Written and oral discussions were conducted with Bioqual and Taconic.

After completion of discussions, the agency requested best and final offers (BAFO) from the offerors. The agency determined that the two proposals were technically equivalent, but that Taconic's proposal offered a significantly lower cost. Taconic's proposal was selected for award.

Bioqual then filed its first protest with our Office on December 19, against HHS' proposed award to Taconic. In that protest, Bioqual argued that the agency, in making its determination to award to Taconic, waived or ignored certain RFP requirements. In response to Bioqual's protest, the agency determined to issue amendment No. 2 on December 21,

which made a number of changes in the statement of work (SOW) and the evaluation criteria, and to solicit new BAFOs.¹

Thereupon, on December 28, our Office dismissed Bioqual's first protest as academic because the agency had granted the desired relief. The agency requested an additional round of BAFOs by January 6. The BAFOs were reviewed by a completely new technical evaluation panel.² The BAFOs of the awardee and the protester were evaluated as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>BAFO Price</u>
Taconic	89.67	\$3,364,583
Bioqual	78.67	\$3,262,308

The agency determined that Taconic offered the greatest value to the government, due to its technical superiority, and that these advantages were worth the slightly higher cost. The agency made award to Taconic, and this protest followed.

UNDISCLOSED EVALUATION CRITERION

Bioqual contends that the agency improperly reviewed, under the amended RFP, the ability of each offeror to cleanse the colony of a helicobacter organism.³ Bioqual argues that this represents use of an undisclosed evaluation criterion. We disagree.

¹The following are some of the changes made in amendment No. 2. The amended SOW stated that the contractor should house the foundation breeding pairs and trios in a facility that achieves a double barrier design, and that the agency's isotech bubble isolation units were no longer required to be used if the contractor could propose a different satisfactory method. Regarding the evaluation criteria, experience in cesarian derivation technology was added to evaluation factor one, and a health monitoring program was added to evaluation factor three.

²The new panel was provided with all of the original as well as the subsequent submissions from both offerors.

³Bioqual, the incumbent contractor, tested the colony in 1994 and found that it carried the helicobacter organism. It appears that the organism was introduced to the colony, through no fault of Bioqual's, due to the introduction into the colony of government provided animals that were assumed to be free of pathogenic agents.

Solicitations must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors set forth in the solicitation, Federal Acquisition Regulation §§ 15.605(e), 15.608. However, while agencies are required to identify the major evaluation factors, they are not required to identify all areas of each factor which might be taken into account, provided that the unidentified areas are reasonably related to or encompassed by the stated criteria, Avogadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229. Here, the HHS' consideration of the helicobacter organism is consistent with the stated evaluation criteria.⁴

While the solicitation did not explicitly provide that the proposals would be reviewed for its ability to rid the colony of the helicobacter organism, we view that feature as intrinsically related to, and encompassed by, the health monitoring solicitation criterion. See Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16. Thus, the agency properly considered each offeror's ability to rid the colony of the helicobacter organism.⁵

MEANINGFUL DISCUSSIONS

Bioqual next argues that the agency failed to conduct meaningful discussions with regard to a number of evaluation factors.

The record shows that each of the areas in which the agency found inadequacies in Bioqual's second BAFO (e.g., its lack of a meaningful proposal to upgrade the computerized record keeping, the lack of documentation of the proven effectiveness of its proposed embryo freezing program, and the reduced level of effort proposed for the principal investigator) were either previously identified to the protester (and the firm was given an opportunity to correct those areas of its proposal), or were first introduced by Bioqual in its second BAFO submission. Contrary to Bioqual's contention, HHS was not required to afford the

⁴While Bioqual focuses on the agency's consideration of ridding the colony of the helicobacter organism, which resulted in a minimal difference in scores between Taconic and Bioqual, the revised technical panel primarily downgraded Bioqual's proposal for the significantly changed barrier design that it submitted in response to the request for second BAFOs.

⁵In any case, we note that Taconic's proposal score for the evaluation criterion under which this health consideration was assessed was only 1.33 points higher than Bioqual's score under the same criterion.

protester yet another opportunity to cure the remaining weaknesses in its second BAFO, ABB Power Co. T&D, Inc., B-246249, Feb. 6, 1992, 92-1 CPD ¶ 157, or to resolve technical concerns first introduced in its second BAFO, Intertec Aviation, B-239672.4, Apr. 4, 1991, 91-1 CPD ¶ 348. Regarding the lack of discussions concerning the helicobacter organism, the new technical evaluation panel noted that while Bioqual's proposal mentioned screening for the organism, Taconic's proposed a germfree transfer procedure that might serve to rid the mouse colony of the organism, even though Taconic had not proposed this procedure for this purpose.⁶ In our view, the agency was not required to discuss this particular conclusion which was reached by examining the relative merits of the two proposed approaches. Weaknesses in an offeror's own proposal relative to the merits of a competitor's offer are not for discussion, see Martin Advertising Agency, Inc., B-225347, Mar. 13, 1987, 87-1 CPD ¶ 285, and it would have been improper to disclose to one competitor another offeror's innovative approach or solutions to problems. See Emerson Elec. Co., B-227936, Nov. 5, 1987, 87-2 CPD ¶ 448. Accordingly, we find that the discussions conducted with Bioqual were meaningful and unobjectionable.

The protest is denied.

Michael L. Golder
for Robert P. Murphy
General Counsel

⁶Taconic's methodology is based on germfree and gnotobiotic technology for the transfer of isolator raised breeding stock to its isolated barrier units. To this end, it is Taconic's policy that all animals entering isolated barrier unit colonies must be cesarian or embryo transfer derived to obtain true germfree/defined flora pups.