



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-176291

DEC 29

Medical University of South Carolina
80 Barre Street
Charleston, South Carolina 29401

Attention: Lawrence D. Hanback, Jr., M.D.
Assistant Professor of Surgery

Gentlemen:

Reference is made to your letter dated September 13, 1972, and prior correspondence, protesting the award of contracts under request for proposals (RFP) No. HEM 110-CA-57(2), issued by the Health Services and Mental Health Administration (HSMHA), Department of Health, Education, and Welfare (HEW).

The RFP was for the development of five total emergency health services systems in geographically dispersed areas of differing population densities. The RFP was issued on March 24, 1972, and proposals were received from 51 offerors by the amended closing date for the receipt of proposals of April 21, 1972. Twelve offerors, including the Medical University of South Carolina, were selected for site visits by HSMHA personnel for the purpose, apparently, of proposal clarification and evaluation. Following these site visits, evaluation reports were prepared by cognizant HSMHA personnel and five offerors were selected for contract awards made on June 28, 1972, notwithstanding the fact that your protest had been filed prior to that time.

You protest that the site visit team which visited the Medical University of South Carolina was lacking in the expertise required to properly evaluate a proposal for an emergency medical service demonstration project, and that such required expertise was possessed by other site visit teams assigned to the evaluation of at least some of the other proposals. In this regard, you contend that only one "non-federal" consultant was included in the team assigned to evaluate the Medical University proposal and that the team lacked expertise in communications, ambulance service delivery and emergency medical service delivery. You further complain that insufficient notice was provided by HSMHA of the intended site visit in that notice of only 7 work days was provided. Finally, you protest "the manner in which the original RFP was released," apparently having reference to the fact that the Medical University was not furnished a copy of the RFP when it was initially released on March 24, 1972.

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The report furnished our Office by HEW states that the 7-man site visit team which visited the Medical University of South Carolina consisted of five medical doctors, including the Assistant Administrator for Public Health Affairs; the Deputy Associate Administrator for Development; the Director, Emergency Health Services; the Director, Regional Medical Programs; and the Director, National Center for Health Statistics Research and Development. The two nonmedical evaluation team members are stated to possess appropriate administrative experience in the field of community health services and emergency medical services. The report therefore concludes that this team possessed the requisite expertise to evaluate the proposal of the Medical University. The team, however, concluded that the Medical University proposal was not as desirable as the proposals submitted by other offerors, primarily because it was "too trauma oriented with little attention being given to the non-ambulance emergents entering the system" and because "The research orientation of the proposal was found to be overpowering" even though the RFP did not call for research as such but rather for an existing emergency medical services system.

With respect to your complaint that the site visit teams which evaluated the proposals of other offerors possessed expertise lacking in the team which evaluated the Medical University proposal, and that only one "non-federal" consultant was included in the Medical University site visit team, the report concedes that the same team members did not participate in each site visit and that certain "non-federal" physicians originally scheduled to participate in the Medical University site visit were unable to attend because of scheduling problems. However, the report emphatically states that:

"The composition of the team provided ample experience and expertise in the three areas of concern to satisfactorily ascertain that the proposed approach for communications, ambulance service delivery and EMS training was sufficient to perform the required level of service. * * *"

With respect to your complaint about the sufficiency of the site visit notice, the report points out that the approximately 10 days' notice provided the Medical University was about the same as that provided other offerors. Finally, on the question of the failure initially to furnish the Medical University with an RFP, the report details the steps taken to assure adequate competition, including advertisement in the Commerce Business Daily, dissemination of the RFP to appropriate

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offices within HEW, the allowance of a 4-week proposal response time (including a 1-week extension), and points out that, notwithstanding the complaint that a copy of the RFP was not furnished the Medical University when issued, the Medical University proposal was dated April 11, 1972, some 10 days before the April 21 closing date for proposal submission.

The administrative report concludes by recommending that the protest be denied and for reasons set out below we concur in the recommendation.

Proposal evaluation is primarily a function of the procurement agency subject to question by our Office only when clearly unreasonable or in violation of procurement regulations. See B-174799, June 30, 1972. An obvious corollary of this function is the selection of qualified individuals to perform the required evaluation. In this instance, five of the evaluators were medical doctors holding responsible positions in HSMHA and all seven of the evaluators are stated to be sufficiently expert in the field of emergency medical services to properly evaluate a proposal for an emergency medical services system. There is nothing in the record before us to substantiate your contention that the site visit evaluation team did not possess the required expertise. Nor is there any requirement that outside consultants be utilized in an evaluation such as that here involved. The fact that such outside consultants might have been used in the evaluation of other proposals is not considered relevant so long as the individuals chosen to conduct the evaluation of the Medical University proposal possessed the requisite qualifications. The recommendations of any outside consultants could only be advisory in any event with the responsibility for any binding determination as to proposal acceptability resting with the HSMHA officials who participated in the Medical University evaluation.

Although it is unfortunate that the Medical University did not receive an RFP initially, the fact remains that you did forward a proposal in advance of the original closing date for the submission of offers and you have indicated in the letter of September 13, 1972, that even with additional time for the submission, which you learned of after submission of the proposal, "this would not have altered our approach to any significant degree." Therefore, the fact that your proposal was not favorably considered by the contracting agency cannot be attributed to the failure to issue you an RFP promptly. In any event, from the standpoint of the Government, the number of proposals received

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indicates that there was adequate competition for the present procurement. Similarly, inasmuch as the site visit apparently was in the nature merely of a clarification and discussion of the originally submitted proposal, we conclude that the notice given of the site visit was adequate.

Accordingly, the proposal evaluation is not subject to question by our Office.

In our review of the record of this case, however, we observed that although your protest was filed on June 20, 1972, before awards were made under the instant RFP, and HEW was informally advised of the protest on June 22, 1972, also before any awards were made, there is no indication in the file that approval by higher authority of the determination to make award notwithstanding the protest was secured, as required by section 1-2.407-8(b)(3) of the Federal Procurement Regulations (FPR), nor was our Office notified of the determination, also required by that FPR section. While this procedural irregularity is not sufficient to invalidate the awards made, we are bringing it to the attention of the Secretary of HEW by letter of today for the purpose of precluding its repetition in future procurements.

Very truly yours,

R.F.KELLER

Deputy Comptroller General
of the United States