



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

B-177184

May 23, 1973

30960

Space Center Medical Associates
907 Ray Area Boulevard
Houston, Texas 77058

Attention: Dr. Moises Lopez
Vice President

Gentlemen:

We refer to your telefax of October 4, 1972, and subsequent correspondence concerning your protest under Request for Proposals (RFP) 9-EB'2-78-2-16P, issued by the National Aeronautics and Space Administration (NASA) on April 6, 1972, for the furnishing of occupational medicine and environmental health support services at the Manned Spacecraft Center (MSC), Houston, Texas.

You maintain that you should have been considered in the competitive range for the procurement since you submitted the lowest cost proposal for the procurement and you are a small, minority-owned business with demonstrated ability to do the work; that the Chairman of NASA's Source Evaluation Board (SEB) was not sufficiently expert to evaluate your proposal and was biased in favor of the incumbent; and that the RFP requirement for an offeror to state whether his key personnel were committed in writing to accept employment if the offeror obtained the contract was prejudicial to your concern.

Five major evaluation criteria for the requirement were set forth in the RFP in order of relative importance as follows:

- Most Important - Operating Plan and Key Personnel
- Important - Recruitment and Staffing
- Less Important - Corporate Capabilities, and Organization and Management

Man-years requirements and the areas of responsibility for the services were also described, as follows:

[Protest of NASA RFP]

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Occupational Medicine Clinic	30
Manned Test Support	11
Cardiopulmonary Laboratory	5
Industrial Hygiene	5
Environmental Health Laboratory	3
Radiological Health/Space Radiation Dosimetry	6
Spacecraft Sanitation	6
	<u>66</u>

Further, the RFP presented an outline which included the following factors to be covered in a proposal to allow the SEB to determine the proposer's understanding of the requirements:

1. Operating Plan

a. Describe the * * * managerial, administrative, or procedural factors within your operational plan for each area of responsibility.

2. Key personnel

a. The Source Evaluation Board will evaluate the quality and pertinence of the background and experience of the key personnel you propose to assign to manage the work of this contract. Resumes will be submitted * * * for * * * positions that you consider key to this effort.

Information should include at least the following:

* * * * *

State whether each key person * * * is committed to accept assignment if your company obtains this contract * * *.

3. Recruitment and Staffing

a. Describe recruitment and employment methods your company will use to man the effort * * *.

b. Discuss the availability of personnel required for this effort and the means by which the individual will be obtained.

* * * * *

4. Corporate/Company Capabilities

- a. Related experience
- b. Availability of Resources

5. Organization and Management

a. Organization

Submit an organization chart which shows the organization you propose to establish at MSC.

* * * * *

b. Management

* * * * *

Proposals were received from your association and Kelsey-Seybold Clinic (KSC) by the closing date set for receipt of proposals, May 10, 1972. The contracting officer reports the results of the SEB evaluation of your proposal in pertinent part, as follows:

* * * No logical plans were submitted for conduct of the Cardiorespiratory Laboratory or Manned Test Support operations. Changes in the Spacecraft Sanitation program shown in the RFP were completely ignored in their proposal with the general comment, "This is an on-going program in which SCMA will pick up familiarity and further the effort." Managerial factors lacked substance, reporting policies and procedures were not clearly identified, and crosstraining provisions were not detailed. In summary, the SCMA proposal contained promises that the work would be done but was devoid of creditable demonstration of how the proposer planned to provide the required services.

* * * The SCMA proposal was submitted with none of the required commitments, other than the part-time services of the two officers of the company and their controller. SCMA proposed seven incumbent key personnel in the Environmental Health area but at significantly lower salaries thus posing a question of retention. Not one complete reference was submitted for any key personnel as required in the RFP. Addresses were incomplete or incorrect which

made it impossible for the SEB to contact these references. The SCMA response did not propose people to fill all key positions. Absent were two and one-half staff physicians. In addition, the proposed project manager and deputy project manager were considered unacceptable to the SEB as shown in the Source Evaluation Board Report. This would further impact the lack of coverage in key personnel areas by increasing the physician vacancies to four and one-half. * * *

The SCMA recruitment and staffing plan was rated "unsatisfactory" since it was not clearly defined and only "anticipated" that the incumbent key personnel and support staff could be retained. The RFP listed 66 positions identified by title. SCMA left 16 of these, including the two and one-half critical physician spaces, unfilled with no assurance that personnel would be available at the start of the contract. Failure of SCMA to provide these physicians would severely limit the Manned Test program and Clinic operations. There was no backup plan presented to cover these 16 positions and the SCMA capability for interim coverage is virtually non-existent.

Recruitment methods are not described for nonmedical professionals, thus making the proposal unclear in this area. Additional personnel called for in Spacecraft Sanitation were not recognized in the recruitment plan or provided for in the staffing requirements.

Because of this evaluation NASA advised you, by letter of September 21, 1972, that your proposal contained weaknesses of such magnitude and nature that neither written or oral discussions or definitive negotiations would be meaningful or advantageous.

NASA Procurement Regulation 3.805-1(a) requires that after receipt of initial proposals, written or oral discussions shall be conducted with all responsible offerors within a competitive range, price and other factors considered. We have also held that the determination of competitive range is primarily a matter of administrative discretion which will not be questioned absent a clear showing of arbitrary abuse of discretion. B-166052, May 20, 1969.

Based on our review, we cannot conclude that NASA arbitrarily determined that your proposal contained weaknesses of such magnitude that it was not within the competitive range for the procurement, notwithstanding the slightly lower estimated cost (relative to KEC's

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proposed cost) which you proposed to do the work. Nor can we question NASA's position that your proposal, while promising that all work aims of the contract would be accomplished, did not show how you planned to provide services for the Cardiopulmonary laboratory, the Manned Test Support Operations, and the Spacecraft Sanitation program.

Informational deficiencies may properly be considered in determining whether a proposal is so materially deficient that it could not be made acceptable without major revisions, and where a proposal is so materially deficient that it could not be made acceptable without major revisions, there is no requirement that discussions be conducted with the offeror. B-176294, October 27, 1972. The present record does not indicate that minor revisions in the above areas would have been sufficient to have placed your proposal within the competitive range or that the required time frame was sufficient to permit the necessary corrections, even if we were to assume that it should have been considered acceptable in all other areas.

With respect to your allegation that NASA did not give sufficient weight to the status of your company as a minority-owned concern, the contracting officer points out that this was not a minority business enterprise procurement, and therefore no preference could be given your company because it is minority-owned. We must agree with NASA's position.

Concerning your allegation that NASA's evaluation of your proposal amounted to a finding that your concern lacked the capacity to do the work and that NASA should have therefore submitted its negative findings to the Small Business Administration (SBA) for that Administration's review, NASA states that its finding related to a decision that your proposal was not within the competitive range because of informational deficiencies, rather than a finding that your firm lacked the capacity to do the work. We note, in this connection, that you were rated "good" in corporate capabilities, "excellent" in organization and management, and "excellent" in your related experience in occupational medicine. On this record, we must conclude that NASA's evaluation of your proposal did not constitute a determination that your firm was nonresponsible for reasons of capacity and therefore it was not required to have referred the question of your capacity to SBA.

Concerning your position that the Chairman of the SEB was not sufficiently expert in occupational medicine to evaluate proposals, NASA states that the SEB chairman has a comprehensive knowledge of all areas of NSC's requirements in Occupational Medicine and Environmental Health Support Services; that he is a Diplomat of the American Board of Preventive Medicine with extensive training in Aerospace Medicine; Occupational Medicine, and Public Health; that

he has filled many important management positions within NAEA over the years and is currently responsible for the management of the Occupational Medicine Program at MEO; and that these factors show that the Chairman was competent to judge proposals. It therefore does not appear that NABA's selection of the person concerned for the SEB constituted an abuse of the broad administrative discretion vested in the agencies in such matters.

Regarding your allegation that the requirement in the Key Personnel Resume for offerors to state whether their key personnel were committed in writing to employment under the contract was prejudicial to your concerns, we note that you did not formally protest the requirement before you submitted your proposal. In this connection, section 20.2(a) of our Interim Bid Protest Procedures and Standards, as set forth in Title 4 of the Code of Federal Regulations, requires that protests against alleged improprieties in any type of solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to such time for consideration by this Office. In view of the foregoing, your protest on this aspect of the KFP is considered to be untimely.

You also allege that the SEB improperly evaluated KSC's proposal in the key personnel category by concluding that KSC could absorb all key personnel currently working under contract into its clinic in Houston (assuming that KSC should not be awarded the contract), and that KSC therefore offered prospective employees an incentive to accept employment and remain with the company. You question whether KSC has actually absorbed personnel affected by reductions in force.

Our review of the SEB's report on KSC's proposal in the key personnel area shows that KSC received an excellent rating in that area largely because the clinic had all key positions filled and committed to the program in writing at specific salaries. Consequently, we cannot conclude that KSC's score in this area primarily resulted from the alleged ability of KSC to recruit and retain personnel as you suggest.

For the reasons set forth above, your protest must be denied.

Sincerely yours,

PAUL G. DEMBLING
For the Comptroller General
of the United States