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**DECISION**



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

**FILE:** B-190843, B-191064      **DATE:** April 14, 1978  
**MATTER OF:** Dikewood Industries, Inc.

**DIGEST:**

1. Where agency announces intention to award new contracts because of need for improved contractor performance, but states it did not intend to imply that incumbent contractor would be ineligible for award, record does not support conclusion that incumbent's proposals will not be impartially evaluated, or that incumbent has been "constructively debarred."
2. Incumbent contractor's assertions that cumulative effect of alleged deficiencies in requests for proposals (RFP) is unfair to those offerors with no prior experience in the Department of Defense Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) and is also unfair to experienced CHAMPUS offerors because of the likelihood that inexperienced offerors will unwittingly offer lower prices is without merit where record shows asserted deficiencies do not appear to exist.
3. Agency is not required to set forth estimate of anticipated changes in program requirements so long as offerors are not expected to price potential changes in initial price offer. Where specifications are not found to be indefinite as claimed, no basis exists to question agency's determination that firm-fixed price contract is appropriate for procurement.

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Dikewood Industries, Inc. (Dikewood) protests the procurements of fiscal intermediary services under requests for proposals MDA906-78-R-0001 (0001), MDA906-78-R-0002 (0002) and MDA906-78-R-0003 (0003) issued by the Department of Defense, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS).

The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) is a health benefits program administered by the Secretary of Defense. The contractor fiscal intermediary services to be procured include those services necessary to receive, adjudicate and pay health benefits claims from eligible participants in the program on a statewide basis, and require substantial administrative and automated data processing (ADP) tasks. RFP 0001 is for contractor services for the states of Iowa, Minnesota, North Dakota and South Dakota, 0002 is for those services for the states of Alaska, Idaho, Montana, Oregon, Utah, Washington and Wyoming, and 0003 is for the state of Missouri. Dikewood is the incumbent contractor for the states covered by 0002 and 0003. We have been advised that a contract has been awarded under 0001, notwithstanding this protest.

The bases for the protest are that:

1. Dikewood has been constructively debarred from contract award contrary to law and its existing contract.
2. The requests for proposals do not adequately describe the services to be performed.
3. A firm fixed price contract is not an "appropriate procurement method to employ \* \* \* until OCHAMPUS can define the services to be performed with reasonable accuracy."

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For the reasons discussed below, the protest is denied.

1. Constructive Debarment

Dikewood's claim of "constructive debarment" is grounded upon its performance of similar services under prior fixed price contracts, amendments to those contracts negotiated by the parties, and actions of certain OCHAMPUS officials subsequent to the date of the contract amendment which Dikewood claims results in the prejudice complained of in this protest.

Dikewood has been performing three contracts for fiscal intermediary services for OCHAMPUS which were awarded to it as a result of competitive negotiations. Each contract was for a term of one year, commencing January 1, 1977, February 1, 1977 and April 1, 1977 respectively, and each of those contracts contained an option to renew for an additional one year term. According to Dikewood, "a backlog of claims and complaints in the CHAMPUS program appeared early on," which are asserted to be the result of "changes required by OCHAMPUS in the conduct of the work and from the fact that the actual services required far exceeded those defined by the Statement of Work in the contract." The contracts were modified on October 28, 1977 to, among other things, increase the contract price and to modify the option so that all contracts as modified, would expire on March 31, 1978. Dikewood claims it agreed to the shortened option periods because of its understanding that it would be considered "a viable bidder for the follow on contracts."

However, shortly after the contracts were amended, OCHAMPUS issued a press release which stated that "new contracts will be negotiated in the near future for processing CHAMPUS claims." The news release went on to say that the "CHAMPUS" director cited a need for improved performance and more realistic estimates of processing costs by the

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contractor as reasons for considering the change." Subsequent correspondence to certain beneficiaries from the Department of the Navy, Bureau of Medicine and Surgery (which has no authority over CHAMPUS claims) stated that "Dikewood Industries, for whatever reason, has failed to perform to the level of excellence expected by our beneficiaries; consequently the Department of Defense has announced that the [Dikewood] contracts \* \* \* will not be renewed after their March 31, 1978 termination date. This, I trust, will be heartening news to all concerned." Dikewood claims the news release placed the entire blame on Dikewood for the deficiencies in its contract performance, and that, in effect, the quoted correspondence (as well as other correspondence in the record) is evidence that "Members of Congress, the beneficiaries and the rest of the Armed Services expect Dikewood to be replaced. OCHAMPUS's actions have created this impression [and] Dikewood's constructive debarment at the hands of OCHAMPUS is a fact." As a remedy, Dikewood requests that we "declare the contracts to have been extended for the full one year option period, instead of the lesser period ending March 31, 1978," thereby resulting in cancellation of the current RFPs. This, claims Dikewood, would allow the "discriminatory effect of the news release" to be dissipated, assuring that Dikewood's proposals (nine to twelve months hence) would be fairly and impartially evaluated."

The record does not support the claim of constructive debarment. OCHAMPUS states that it did not intend to imply in its news release that Dikewood would not be eligible for the award of a new contract, and asserts that Dikewood's proposals will be considered in the same manner as all of the other proposals, noting that "OCHAMPUS recognizes the implied condition of every [solicitation] is that the Government will fairly and honestly consider each proposal submitted. While the gratuitous comments of the Department of the Navy perhaps imply that Dikewood would not be eligible for any future

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OCHAMPUS contract awards, that agency has no authority over the evaluation and award of any of those contracts. Moreover, we note that Dikewood does not claim its proposals have been unfairly evaluated as a result of the publicity, only that they will be so evaluated. In this regard, however, Dikewood has not protested the substance of the evaluation which resulted in award to another offeror under RFP 0001.

In any event, we point out that the relief requested by Dikewood cannot be granted even if we were to assume the news release was evidence of the prejudice Dikewood claims, since we are without authority to direct an agency to exercise a contract option which has been deleted from the contract by the terms of an agreement supported by adequate consideration.

## 2. Inadequate Requests for Proposals

Dikewood asserts that the present RFPs are substantially unchanged from those issued in connection with its prior contracts, despite, according to Dikewood, the "inaccuracies of the original RFP and the changes recognized in the contract modification previously referred to." Dikewood claims the CHAMPUS program has many "unique characteristics which significantly increase manning levels and training intensity required at various work stations" above those of a "typical health program." It is Dikewood's contention that the RFP contains "no specific statement calling attention to "[the] fundamental differences between CHAMPUS and any other health care reimbursement program," and that there are inconsistencies between the CHAMPUS Program Manual and the CHAMPUS Operating Manual, both of which it claims are part of the specifications. Essentially, Dikewood argues, the cumulative effect of the claimed deficiencies renders the RFP unfair to those with no prior CHAMPUS experience (a class of proposers which does not include Dikewood) and to those with prior CHAMPUS experier (such as

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Dikewood) because the experienced proposers' prices "will almost certainly be higher" than those offered by firms relying solely on what can be gleaned from the RFP.

With regard to Dikewood's assertion that the changes negotiated in the prior contract have not been included in the current solicitations, OCHAMPUS reports that the changes negotiated under the changes clause of the prior contracts, specifically the "claims edit requirements", have been incorporated into the current edition of the Data Processing Manual which is incorporated into the RFP. Without denying the foregoing, Dikewood nonetheless concludes that the agency has adopted a "seller beware attitude", because a "very exacting and incisive study of the reference manual must be made to understand the cost implications." Dikewood appears to understand the cost implications of the changes made to the specifications, but is apparently concerned that its untutored competition will not if they do not adequately study all of the documentation in the RFP. We do not, however, believe it can fairly be said that the RFP is deficient merely because exacting study of the specifications is required to adequately understand the agency's requirements.

Dikewood also asserts that both the CHAMPUS Program Manual and the "draft CHAMPUS Operations Manual" are included in the RFP, and that they conflict in some instances. Our own review of the RFP, with specific attention to section M (List of Documents and Attachments), does not indicate that the Program Manual is included in the solicitation. Rather, Section M-1 incorporates by reference the "CHAMPUS Operations Manual dated 16 December 1974", and that document is part of the record before us. If there is some other relevant document that conflicts with the Operations Manual, the matter is one for resolution by the offerors and CHAMPUS.

Dikewood also complains of the cost implications of the number of problem claims which are encountered

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and not specifically highlighted in the RFP. As part of this allegation, Dikewood asserts that the processing costs of an admitted lack of an eligibility enrollment system in the CHAMPUS program are hidden from all prospective offerors (save those with previous CHAMPUS experience) because the beneficiaries of the program and the providers of the services do not know (1) the rules requiring that they furnish adequate information for eligibility certification, (2) that these rules had not previously been enforced, and that (3) no education program has been initiated by OCHAMPUS to develop claimant understanding of these requirements. Dikewood also asserts that a contractor will be required to construct a claim itself "in 35 percent" of the cases, because the detail lines of the claim form are not completed when claims are submitted.

Chapter 6 of the CHAMPUS Operations Manual, supra, addresses the problem. For example, paragraph 1 provides in pertinent part that:

- "a. Some CHAMPUS claims payments are delayed because complete \* \* \* data is not included on the claim form submitted to fiscal administrators for payment.
- "b. Fiscal Administrators are expected to maintain a record of each Champus claim processed for each family. \* \* \*
- "c. This family history file should contain all of the \* \* \* data required for completion of Section I of the claims form [eligibility data]. As such, it is a source of data for claim form completion without rejecting the claim or requesting data from the beneficiary/sponsor.
- "d. If the family history file has been properly established the only

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\* \* \* [eligibility data] required  
\* \* \* [is] the patient's name, ID  
card data and certification sign-  
ature. The rest of the data can  
be taken from the family history  
file. (emphasis added)

"e. If the data is missing from the  
initial claim submitted (no family  
history file) the following actions  
will be taken:

- (1) The missing \* \* \* data will  
be requested by mail or tele-  
phone, if possible, and the  
family history file will be  
established.
- (2) Normally, the claim will be  
suspended pending receipt of the  
missing data. However, claim  
processing and payment need  
not be delayed when any of the  
following items are missing.  
Even though payment is not de-  
layed, the data will be re-  
quested for family file com-  
pletion. \* \* \*

In addition paragraph 4 states:

"a. Determination of an individual's  
eligibility for program benefits  
is the responsibility of the uni-  
formed service of which the mil-  
itary sponsor is \* \* \* an active  
duty or retired member. In order  
to expedite processing of claims,  
\* \* \* fiscal agents can save time  
in many instances by seeking  
eligibility verifications direct-  
ly from the service concerned. \*  
\* \* [A]ssistance from the



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services concerned should be requested only after the procedures in paragraph 1 \* \* \* prove unsuccessful.

\* \* \*

- "d. The time required to obtain a reply varies from two weeks to several months \* \* \*. As a general rule, verifications are returned in 30 to 60 days.

Also, paragraph 8 addresses the matter of incomplete claim forms in the following manner:

"a. Payments may be made directly to the patient or sponsor on the basis of an itemized bill (which may be either receipted or unpaid) for authorized medical service or supplies received by a CHAMPUS beneficiary. \* \* \*

"b. The itemized bills to support the payment must reflect sufficient information about the services furnished to enable the fiscal agent to determine that the services were authorized and that the charges are reasonable. A [claim form] \* \* \* must accompany the itemized bills."

We think the foregoing would serve as ample warning to an offeror experienced in health care reimbursement programs that it could not rely on beneficiary eligibility self certification; that it would, in effect, be required to establish an eligibility enrollment system (the "family history file") for its service area, from which it would be required to determine eligibility; and that it would be required to construct claims from billings included with a claim in a number of instances.

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In our view, the implications of these requirements are apparent and should alert offerors to consider them in the formulation of both their technical and cost proposals. In short, while the numbers of the problem claims are not directly specified, neither their implications on cost, nor the fact that some beneficiaries or providers will not fully understand the certification requirements are hidden from prospective offerors.

Finally, Dikewood asserts that the "turbulent change [in program benefits and certification requirements] produces a radically different demand for provider and beneficiary relations than is normally carried on in more stable programs and that the RFP gives the proposer no basis for planning such a specialized effort." Dikewood points to the numbers of changes in its prior OCHAMPUS contract as an example of the instability of the program, and while it acknowledges that an amendment to that contract was negotiated under the contract's changes clause, it nonetheless contends that adjustments made pursuant to that clause cannot compensate a contractor for the effect on beneficiary and provider relations costs which are substantially affected by large numbers of changes. Thus Dikewood contends that the RFP should specify the "anticipated" number of changes to provide a basis for planning.

We do not agree. So long as the offeror is not expected to price all potential program changes in his initial price offer, we are unaware of any requirement that an agency estimate the number of potential "changes" which a contractor might be required to incorporate into the contract. If Dikewood believes it will incur costs as a result of changes which will not be compensable under the equitable adjustment provisions of the changes clause, that is a risk that should be considered by it in the formulation of its fixed price offer. See Palmetto Enterprises, B-190060, February 10, 1978, 78-1 CPD 116.

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In any event, we fail to see how Dikewood is placed at a competitive disadvantage by the structure of the RFPs. Protester's narrative of the "deficiencies" in the RFPs is based primarily on the knowledge it has gained as an incumbent contractor. Such knowledge normally is viewed as a legitimate competitive advantage on the part of the incumbent, see, e.g., Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404; H.J. Hansen Company B-181543, March 28, 1975, 75-1 CPD 187, and may well be reflected in the technical evaluation of the incumbent offeror's proposal. Thus, Dikewood's incumbency could work to its advantage. Moreover, while price is an important consideration under the evaluation criteria, it is less important than technical considerations, and consequently we do not believe Dikewood's fears relative to inexperienced and possibly lower priced offerors are well founded.

We have previously considered a case in which we found merit to the protester's contention that the use of indefinite specifications in a negotiated procurement would be prejudicial to informed offerors because of the possibility that an uninformed offeror would submit an unrealistic offer. 42 Comp. Gen. 19 (1962). In that case, the agency admitted that many of the drawings and specifications were either erroneous, deficient or nonexistent, but that it was its intention to point out the actual errors contained in the drawings by negotiation, "beginning with the lowest offeror." We found that such a procedure clearly favored "those firms unwittingly submitting unrealistically low bids" (emphasis added), and we were of the opinion that the indefiniteness of the solicitation rendered it fatally defective, particularly in view of the contemplated negotiation procedure. We believe the present case can clearly be distinguished on its facts. First, the evaluation criteria do not favor the lowest priced offeror, and there is no evidence to suggest that negotiations will be conducted only with the

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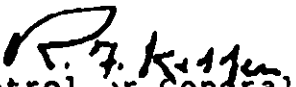
lowest offeror. Indeed that scheme would be contrary to the requirements of Armed Services Procurement Regulation 3-805 (1976 ed., DPC 76-7, 29 April 1977), which requires negotiation with all offerors who submit proposals within a competitive range. Second, as previously discussed, we do not believe that experienced offerors in the health care reimbursement field would be misled by the specifications, so that the agency cannot reasonably be charged with withholding any known defects in the specifications from prospective offerors.

In light of the above discussion, we are of the opinion that no basis exists to require amendment of the RFPs to include those factors which Dikewood asserts are necessary to clarify the solicitations.

### 3. Firm Fixed Price Contracts

Finally, Dikewood, pointing out that a cost reimbursement contract should be used when the parties cannot accurately estimate the extent of the work at the time they enter into the contract, asserts that a firm fixed price contract is inappropriate for use in this instance because of its claims of inaccuracy in the RFPs. Dikewood claims that it is "obvious that OCHAMPUS has not described the services it wants to purchase with sufficient accuracy to permit a reasonable estimate of the costs involved." We disagree. Having concluded that the RFPs are not indefinite as claimed, we find no basis to conclude that the contracting officer's determination that a firm fixed price contract is an appropriate contract type for this procurement was not reasonable.

The protest is denied.

  
Deputy Comptroller General  
of the United States