



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Medical Professionals, Inc.

File: B-275784

Date: March 27, 1997

Sam Zalman Gdanski, Esq., for the protester.

James S. Ganther, Esq., for Seaborn Healthcare Services, an intervenor.

John R. Osing, Jr., Esq., Department of the Navy, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Allegation that contracting agency improperly misled protester into raising its pricing over the course of the procurement is denied where the record shows that the protester was only asked to verify the pricing it had previously proposed; protester's determination to ignore that request and to instead raise its pricing in response reflects its own business judgment and no impropriety on the agency's part.

DECISION

American Medical Professionals, Inc. (AMP) protests the award of a contract to Seaborn Healthcare Services under request for proposals (RFP) No. N62645-96-R-0003, issued by the Department of the Navy, Naval Medical Logistics Command, for ultrasound technician services at the Naval Medical Center in Portsmouth, Virginia. AMP chiefly argues that the Navy conducted inadequate discussions with the firm.

We deny the protest.

The solicitation anticipated the award of a fixed-price contract for the provision of these services by two ultrasound technicians over 1 base year, with up to 5 option years. The technicians are required to perform their duties for 40 hours per week during normal business hours. In addition, one technician is required to provide on-call services, on an as-needed basis, from the end of a given workday through the next morning. Award would be made to the offeror submitting the lowest-priced, technically acceptable offer.¹

¹Technical acceptability, not at issue here, would be determined based upon the documented professional and technical experience of the offered technicians.

The Navy evaluated the 10 proposals it received and included 8 in the competitive range. Two rounds of discussions were conducted, and two best and final offers (BAFO) were requested and received. The proposals of six offerors were determined to be technically acceptable, including those of Seaborn and AMP. Seaborn submitted the lowest price for both technicians, at \$258,519 and \$228,800, respectively. AMP submitted the third low price for the first technician and the fourth low price for the second technician. Award was made to Seaborn on December 17 and this protest followed. AMP chiefly argues that the Navy failed to conduct meaningful discussions with the firm.

Agencies are required to conduct meaningful discussions with all offerors whose proposals are in the competitive range; this requirement is satisfied by advising them of weaknesses and deficiencies in their proposals which require amplification or correction and by affording them the opportunity to submit revised proposals. Federal Acquisition Regulation (FAR) § 15.610(c)(2) and (5) (FAC 90-31); Ameriko, Inc., B-262029, Nov. 6, 1995, 95-2 CPD ¶ 208.

In this case, the initial evaluation showed that AMP had submitted the same pricing for both the regular service hours and the on-call service hours. This raised the concern that the firm had not considered the higher cost of providing on-call services--the Navy's experience with these contracts showed that on-call services were generally priced higher than services for regular hours. The Navy's July 22 discussion letter stated:

"Your prices for on-call services are identical to your prices for regular services. Please verify your on-call services pricing and provide evidence that you will be able to provide on-call services for the prices proposed."

AMP's response did not verify the firm's on-call pricing or provide evidence of its ability to provide these services at the prices proposed. Instead, AMP substantially lowered its on-call pricing with no explanation.

Needless to say, this response did not allay the Navy's concern. In addition, the contract specialist noted that AMP's proposed pricing for its regular services, which included cost loading, was lower than the pricing shown in the Navy's market survey, which did not include cost loading. This raised the additional concern that

AMP's direct labor compensation might be significantly lower than the market survey labor rate. Consequently, the Navy's September 3 discussions letter to AMP stated:

"1. Your Base Period, Option I, and Option II prices appear low in comparison to the market area salaries. Please verify these prices and provide evidence that you will be able to provide services for the prices proposed.

2. Your prices for on-call services . . . are lower than your prices for regular services. Please verify your on-call services and provide evidence that you will be able to provide on-call services for the prices proposed."

AMP's response did not verify any of the firm's pricing or provide evidence of its ability to provide any of these services at its proposed prices. Instead, AMP raised many of its prices and stated that they were "verified," with no further explanation. AMP's on-call services pricing remained at or near its pricing for the regular services.

In view of AMP's response, the Navy's first BAFO request firm stated:

"Your price[s] for on-call services . . . appear low. While you have verified your on-call service prices, you have not provided evidence that you will be able to provide on-call services for the prices proposed."

In its BAFO, AMP's on-call pricing remained at or near the pricing for its regular services. However, for the first time, AMP provided the evidence repeatedly requested by the Navy. AMP submitted certifications from its proposed technicians in which each stated that she would provide her on-call services at the proposed rates. The Navy's second BAFO request made no mention of any pricing deficiencies, and AMP's second BAFO did not revise its pricing.

AMP alleges that the Navy improperly failed to advise it of the "central weakness" in its proposal--that it might not be able to provide personnel at its proposed prices. This allegation reveals a lack of familiarity with the record. There is no question but that this weakness, while present in AMP's initial and revised proposals, was resolved by the firm's BAFO submission of the above-discussed certificates from its proposed technicians. Indeed, that AMP received meaningful discussions on this issue is evidenced by the fact that it submitted these certificates at the specific request of the Navy.

In any event, it appears that AMP is actually alleging that it was improperly misled by the Navy during discussions into raising its pricing over the course of the procurement. This allegation is without merit. As indicated above, each and every discussion question merely asked AMP to verify its pricing and to provide evidence that it could provide services at those prices. There is nothing misleading about these questions, and the fact that AMP chose to ignore the agency's requests and to raise its pricing instead reflects its business judgment and no impropriety on the part of the agency. Ameriko, Inc., supra; Crestmont Cleaning Serv. & Supply Co., Inc., et al., B-254486 et al., Dec. 22, 1993, 93-2 CPD ¶ 336; Eagle Technology, Inc., B-236255, Nov. 16, 1989, 89-2 CPD ¶ 468.

As a final matter, AMP's contention that the contracting officer's repeated requests for verification of its pricing amount to an improper auction is similarly without merit. Prohibited auction techniques include such actions as (1) indicating to an offeror a price it must meet in order to receive further consideration; (2) advising an offeror of its relative standing; and (3) furnishing information about other offerors' prices. FAR § 15.610(e)(2). None of these techniques was present here. Mil Colores, S.A., B-270208, Feb. 16, 1996, 96-1 CPD ¶ 102.

The protest is denied.

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