



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: The American Indian Center, Inc.

File: B-278678

Date: February 27, 1998

Mary Helen Deer and T. Craig Anderson for the protester.
Terrence J. Tychan, Department of Health & Human Services, for the agency.
Jennifer Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest objecting to technical evaluation of proposal is denied where record demonstrates that evaluators' judgments as to merits of proposal were reasonable.
 2. General Accounting Office will not consider complaint that awardee lacks the stability of management and financial integrity necessary for performance since such a complaint is in essence a challenge to the contracting officer's affirmative determination of responsibility.
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DECISION

The American Indian Center, Inc. (AIC) protests the evaluation of its proposal and the award of a contract to the Dallas Inter-tribal Center, Inc. (DIC) under request for proposals (RFP) No. 246-97-R-0012, issued by the Department of Health and Human Services, Indian Health Service, for operation of a medical and dental clinic serving the Indian population of the Dallas, Texas metropolitan area. The protester contends that the evaluators' criticisms of its proposal were unfounded and that the awardee should have been found ineligible for award.

We deny the protest.

The RFP solicited proposals to furnish, equip, and staff an outpatient medical and dental clinic accessible to the Indian population of the Dallas metropolitan region. The solicitation advised offerors that technical factors, the most important of which were program description (worth 35 percent of an offeror's technical score), health problem statements (worth 20 percent), and equipment and facilities (also worth 20 percent), would be of paramount importance in the selection of an awardee,¹

¹The remaining technical evaluation factors were staff organization and supervision (worth 10 percent of the technical score), quality assurance and program evaluation (continued...)

but that cost would be a discriminating factor in the event there was no significant difference in the technical evaluations of two or more offers. RFP § M. Competition under the solicitation was limited to Indian-owned firms, and award of a cost reimbursement contract was contemplated.

Two proposals were received by the September 2, 1997, closing date, one from AIC and one from the incumbent contractor, DIC. Upon initial evaluation, AIC's proposal received a score of 86 and DIC's a score of 64 out of a total of 100 available points. After holding discussions with both offerors and furnishing them with the opportunity to revise their proposals, the evaluators reevaluated and rescored the proposals. The evaluators found that DIC had furnished information that had been missing from its initial proposal and awarded the proposal a significantly improved score of 97.5. AIC's proposal, on the other hand, received a substantially lower score of 68 because the revised proposal confirmed some of the weaknesses initially noted by the evaluators. Among the weaknesses noted in AIC's proposal were the location of its clinic at a site not accessible by public transportation; its proposed reliance on volunteers to transport and install government-owned equipment at its facility; its failure to have hired or obtained commitments from required staff; and its failure to have submitted property and procurement manuals.

After evaluation of AIC's and DIC's costs proposals, the agency concluded that their evaluated costs were virtually equal (AIC, \$681,487.62; DIC, \$681,975.69). Because DIC had received a significantly higher technical score than AIC and its costs were considered reasonable, DIC was selected for award. A contract was awarded to DIC on October 31. AIC received a telephonic debriefing on November 13, and protested to our Office on November 19.

The protester takes issue with the agency's evaluation of its proposal. The evaluation of technical proposals is primarily the responsibility of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Federal Env'tl. Servs., Inc., B-250135.4, May 24, 1993, 93-1 CPD ¶ 398 at 8-9. In reviewing protests challenging an agency's evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable

¹(...continued)
(worth 5 percent), staffing description (worth 5 percent), and management systems (worth 5 percent).

statutes and regulations. Young Enters., Inc., B-256851.2, Aug. 11, 1994, 94-2 CPD ¶ 159 at 3. A protester's mere disagreement with the agency's evaluation does not render it unreasonable. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454 at 5. Here, we conclude that the agency's evaluation of AIC's proposal was reasonable.

As noted above, one of the principal weaknesses the agency found in AIC's proposal was the location of its clinic at a site not accessible by public transportation. The proposal was downgraded for this weakness under the health problem statements evaluation factor, receiving 13.5 of 20 available points. AIC asserts that the location of its clinic--1 mile south of Highway 183 in Euless, Texas, which is midway between Dallas and Fort Worth--is a strength rather than a weakness because Euless is more centrally located, relative to the population the clinic is intended to serve, than is the south-Dallas location of the DIC clinic. The protester further argues that the lack of public transportation to its location does not render the facility inaccessible to clients without personal transportation because it proposed to furnish shuttle van service between the clinic and several locations accessible by the Dallas and Fort Worth public transportation systems.

We think that the evaluators reasonably viewed the location of AIC's clinic, regardless of how central to the population it is intended to serve, as a weakness due to its inaccessibility by public transportation. Although the protester insists that the vast majority (*i.e.*, 75 percent) of clinic patrons have access to personal automobiles for travel to and from the clinic, there remains a significant number (*i.e.*, 25 percent) who are dependent on public transportation for access to the clinic. We recognize that AIC proposed shuttle van service as a solution to the inaccessibility problem; it is clear from the record that the evaluators did not view the proposed service, which relies on a single van to ferry patients back and forth to a variety of different drop-off points, as providing the same level of access as public transportation directly to the site, however, and we see no basis upon which to question their judgment in this regard.

Under the equipment and facilities factor, AIC's proposal received 9.5 of 20 points; the agency identified as a weakness AIC's proposed reliance on volunteers to transport and install government-owned equipment at its facility. The protester argues that its proposed reliance on volunteer labor should not have been viewed as a weakness because the nondental equipment would not require specially trained personnel to move it from one site to another. The protester has not argued that relocation of the dental equipment could be accomplished by nonprofessionals; thus, regardless of whether or not volunteers could successfully transport and reassemble the nondental items, we think that the evaluators had a reasonable basis

for viewing the protester's failure to propose to employ professional movers as a weakness.²

The proposal also was downgraded under the program description factor (under which it received 23.5 of 35 points) in part because the evaluators found that AIC had failed to hire or obtain commitments from required staff. AIC argues that it was unfair for the evaluators to downgrade its proposal for failing to include letters of commitment from proposed staffers given that the RFP did not require such letters.

Although the solicitation did not explicitly require the submission of letters of commitment from proposed clinic staffers, it did require offerors to "[p]rovide information on how the project is to be organized, staffed and managed." RFP § L-14.G.4.a.(3) (Emphasis added). AIC responded to this request for information by stating, on page 30 of its proposal, as follows:

Professional staff from physicians to support staff will be hired to staff the clinic to meet all requirements for standards and for the State of Texas. If AIC is successful in being awarded this contract, it is the intention to give the staff of the current contracted clinic the first opportunity to retain their positions. For those positions left unfilled, advertisements will be placed in the local newspapers.

²The evaluators also noted, as a weakness relating to AIC's equipment, that the acquisition of DIC's equipment would not include the "head x-ray," which belonged to DIC, and that AIC had not explained how it otherwise intended to acquire such a unit. We think that this criticism of AIC's proposal was unreasonable since, as the protester points out, the catalogue of government-owned equipment furnished with the RFP identified several panoramic x-ray machines as available for transfer to the awardee. To the extent that this listing was in error (and a necessary x-ray machine identified as belonging to the government in fact belonged to DIC), we think that it was incumbent upon the agency to raise the matter with AIC and give the protester the opportunity to explain how it could otherwise acquire the necessary item before penalizing it for failing to propose to furnish it. We do not think that the failure to discuss this item resulted in prejudice to AIC, however, because it is apparent from the record that even if this deficiency had been corrected, AIC would still have received a relatively low score under the equipment and facilities criterion due to the previously discussed concerns regarding the moving of equipment. In fact, even assuming AIC's proposal had received full points under this factor (increasing its score by 10.5 points), its overall score (78.5) would remain considerably lower than the awardee's (97.5). Given that the offerors' costs were virtually equal, there is no basis to conclude that such an increase in score would have affected the award decision.

According to the protester, these sentences clearly conveyed its intent to hire the incumbent's work force.

We do not think that the excerpt from its proposal cited by the protester conveyed the information that AIC apparently intended, i.e., that it intended to offer positions to the staff currently working at the DIC clinic and had reason to expect that they would accept. Rather, the excerpt gave the impression the DIC staffers would not be approached unless and until AIC received the award--and that no other efforts at recruitment would be made until after the positions had been offered to the incumbent employees. We think that it was reasonable for the evaluators to have viewed this approach to recruitment as insufficient to ensure that AIC would be prepared to begin furnishing services on the contract's scheduled starting date--and therefore to have downgraded the proposal under the program description criterion.³

Finally, AIC argues that DIC should have been found ineligible for award due to its management instability and lack of financial accountability.

Whether an offeror has the organization and financial controls necessary for successful performance is a matter bearing on its responsibility.⁴ See Federal Acquisition Regulation § 9.104-1(e). Thus, where a protester argues that an awardee lacks these elements, it is in essence challenging the contracting officer's affirmative determination of the awardee's responsibility. Because the determination that an offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review, we do not consider such challenges absent a showing of possible bad faith on the part of government officials or that definitive responsibility criteria in the solicitation were

³We need not address the protester's final complaint regarding the evaluation of its technical proposal--i.e., that it was improperly downgraded under the management systems criterion due to its failure to furnish property management and procurement manuals--because any downgrading of the proposal on this basis was de minimis. In this regard, AIC's proposal received a score of 3.5 of a maximum possible of 5 under the Management Systems criterion, meaning that it lost only 1.5 points for failing to furnish the manuals.

⁴While traditional responsibility factors may be used as technical evaluation factors in a negotiated procurement when a comparative evaluation is to be made, Docusort, Inc., B-254852, Jan. 25, 1994, 94-1 CPD ¶ 38 at 6, the RFP here did not provide for consideration of such factors.

not met. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (1997); King-Fisher Co., B-236687.2. Feb. 12, 1990, 90-1 CPD ¶ 177 at 2. Such a showing has not been made here.

The protest is denied.

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