



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: National Toxicology Laboratories, Inc.

File: B-281074.2

Date: January 11, 1999

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Robyn Dyson Towles, Department of Justice, for the agency.

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DIGEST

1. Contentions that agency unreasonably evaluated protester's technical proposal and improperly concluded that the awardee's higher-rated, higher-cost proposal offered the best value to the government, are denied where the record shows that the evaluation was reasonable and in accordance with the stated evaluation criteria, and the agency reasonably determined that the technical superiority of the awardee's proposal warranted the cost premium.

2. Contention that agency's method for allocating points for cost placed undue emphasis on technical merit and allegedly resulted in a misleading evaluation is denied where the scoring scheme used by the agency accurately reflects the relative weights of the technical and cost factors announced in the solicitation and there is no evidence that the agency's approach resulted in a distorted or misleading evaluation.

DECISION

National Toxicology Laboratories, Inc. (NTL) protests the award of a contract to PharmChem Laboratories, Inc. under request for proposals (RFP) No. OJP-97-R-010, issued by the Office of Justice Programs of the Department of Justice (DOJ) for technical assistance and inmate drug urinalysis. NTL primarily argues that the agency improperly evaluated its proposal.

We deny the protest.

The RFP, issued on April 14, 1998, contemplated the award of an indefinite-quantity/indefinite-delivery contract for a base period with up to three 1-year option periods. RFP §§ H-1, L.4, L.6. The RFP contemplated issuing task orders under the proposed contract on a fixed-price basis, time and materials basis, or a combination thereof. RFP § H-1. The RFP required offerors to submit proposals in three

separate volumes (technical/management in volume I, cost proposal in volume II, and representations and certifications in volume III) and contained detailed instructions on the type of information to be provided in each volume. RFP §§ L.10, L.11, L.13. Section C-100.4 of the RFP described in detail the specific work areas, divided into seven distinct tasks, for which the successful offeror would be responsible under the contemplated contract.

Section M of the RFP listed the following technical evaluation factors (weight of each factor shown in parentheses): organization/management (20 percent); technical approach (20 percent); staff qualifications (20 percent); and past performance (25 percent). Cost was worth 15 percent. The RFP stated that the technical areas would be considered more significant than cost in the award decision. RFP § M-4. Award was to be made on the basis of the proposal determined to be the best value to the government. RFP § M-4.

Three firms, including the protester and the awardee, responded to the RFP by the time set on May 29 for receipt of proposals. A source evaluation board (SEB) evaluated initial proposals by assigning numerical scores under each technical evaluation factor and calculating a total score for each proposal. The agency conducted discussions with all three firms and requested best and final offers (BAFO) from all three. The SEB rescored technical proposals based on BAFOs, and the contracting office provided cost scores,¹ with the following results:

Offeror	Tech. Score	Cost Score	Cost
PharmChem	78.00	14.55	\$8,091,229
NTL	65.30	15.00	7,850,280
Offeror A	73.30	13.00	9,061,894

Post-Negotiation Memorandum, Aug. 28, 1998.

Based on these results, the SEB recommended that PharmChem be awarded the contract. The contracting officer agreed with the SEB's recommendation and, on

¹Cost scores were calculated by assigning the maximum number of possible points (15) to the offer with the lowest total proposed cost, and proportionately lower scores to higher-cost proposals.

August 28, awarded PharmChem the contract. This protest followed a telephonic debriefing by the agency.²

Protester's Contentions

NTL primarily argues that DOJ misevaluated its proposal in several respects. Specifically, NTL argues that DOJ failed to give it credit for specific strengths in its proposal and improperly concluded that there were certain weaknesses in its proposal. The protester asserts that as a result of these alleged errors, the agency's cost/technical tradeoff decision was flawed.

Discussion

Our Office will not engage in an independent evaluation of proposals nor make an independent determination of their relative merits. Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ 114 at 9. Rather, we review the agency's evaluation only to ensure that it was reasonable and consistent with the terms of the solicitation. Sensis Corp., B-265790.2, Jan. 17, 1996, 96-1 CPD ¶ 77 at 6. A protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. Based on our review of the record, including the SEB's narrative in support of its evaluation, we conclude that the numerical ratings assigned NTL's proposal are reasonably supported. Below we discuss some of the more significant issues in support of our conclusion.

Organization/Management

As noted above, the first technical evaluation factor was organization/management. The RFP specifically instructed offerors to present an organization and management plan that would ensure both quality and accuracy of the services provided and the

²DOJ argues that the protest should be dismissed because NTL is not an interested party under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1998). DOJ asserts that, since NTL's technical proposal was ranked third, even if its protest were sustained NTL would not be next in line for award because there is a higher-rated intervening offeror. The agency's argument overlooks the substance of NTL's challenge--that the agency improperly evaluated its proposal. Specifically, NTL argues that had the agency conducted a proper evaluation, its proposal would have received a higher technical rating and that with its lower price, it would have been selected as the best value to the government. Thus, if we found that NTL's arguments had merit and sustained its protest, it is possible that upon reevaluation, NTL's proposal would be in line for award. We therefore consider NTL an interested party to maintain the protest. See Pan Am World Servs., Inc., et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446 at 6.

efficient operation of the contract. RFP § L.10. Offerors were instructed to demonstrate that they have the ability and resources to manage a contract of the contemplated complexity, and to adhere to established deadlines for completing the required tasks. Id. In addition, offerors were required to provide control procedures to ensure internal quality control in areas specified in the RFP, including testing procedures, storage of specimens, office and billing procedures, ability to meet deadlines, reporting test results, and reporting formats for data, to name a few. The organization/management factor was divided into two areas, operations and quality control, each worth a maximum of 10 points.

Contrary to the protester's argument, the record shows that the SEB identified several strengths in NTL's proposal in this area, assigning a composite score of 14 out of a maximum of 20 points under this factor. For instance, the SEB found that NTL's proposal demonstrated an ability to manage a contract of the contemplated complexity and to adhere to established deadlines for task completion. The SEB also found that NTL's proposal demonstrated an adequate management commitment to quality and accuracy in conducting laboratory testing and to providing technical assistance, and that NTL's control plan demonstrated sufficient internal control procedures in place at all points in contract operations. Contrary to the protester's assertions, the SEB specifically noted NTL's quality control program as a strength in NTL's proposal. In addition, the SEB found that NTL responded to its concerns regarding spoilage and degradation. The record thus shows that the SEB recognized the strengths NTL points out were included in its proposal under this factor and considered them in its assessment.

However, the SEB identified several deficiencies, primarily due to lack of detailed information in NTL's proposal. For example, the SEB specifically noted that with respect to one of the tasks described in the RFP--task 5.D, related to reconciling billing--NTL simply copied the task as it appeared in the RFP, inserting "NTL" in place of "the Contractor," without explaining how NTL would perform the required task.³ Based on the SEB's finding, the agency requested that the protester provide further details regarding its billing procedures, specifically asking how NTL would implement the requirement. While NTL provided additional information in response

³Task 5.D states:

The Contractor shall reconcile billings with number of tests performed for each of the sites by each age/gender grouping. The Contractor shall specify which tests were performed for any special analysis requested by [the National Institute of Justice] and specify any other costs incurred by tasks other than the routine quarterly urinalysis for all [Arrestee Drug Abuse Monitoring] sites.

RFP at C-16.

to DOJ's questions regarding billing, NTL's brief responses did not allay the SEB's concerns, and the proposal was downgraded accordingly, which we do not view as unreasonable.

Technical Approach

Under the second evaluation factor, technical approach, offerors were instructed to clearly address tasks 1-5 contained in section C of the RFP. Proposals were to be evaluated on the content and clarity of the responses to the identified tasks, and on the soundness, feasibility, effectiveness and completeness of approaches selected in terms of staffing patterns, work loads and resources needed to accomplish each task. RFP § M-3.2.

The protester's proposal earned a composite score of 13 out of a maximum of 20 points under this factor. Contrary to the protester's assertions, the record shows that the evaluators considered the firm's experience with foreign laboratories and its transition plan as strengths in NTL's proposal and credited the proposal accordingly. The SEB found, however, that NTL had failed to provide sufficient detail in response to task No. 2 (specimen handling procedures) on how the firm would assist the agency in measuring sites' performance with respect to the submission of urine specimens. The SEB concluded that NTL's proposal was not tailored to the RFP's requirements. As with other aspects of the proposal, the SEB found that NTL had merely restated the tasks described in the RFP and simply promised to fulfill them, without adequately discussing its resources or strategies, or explaining steps involved in solving problems.

Our review of the record confirms the evaluators' unanimous conclusion that in responding to the RFP in the organization/management and technical approach areas, NTL's proposal essentially parrots the language of the tasks described in the RFP, does not explain how NTL proposed to accomplish the RFP's requirements, and lacked sufficient detail to allow the agency to determine NTL's understanding of the requirements. This was not an acceptable approach, especially in light of the RFP's specific instructions that proposals be "sufficiently detailed to enable the Government to evaluate the proposal by each factor and subfactor" RFP § L.9. Moreover, the RFP warned that general statements would be considered inadequate, and that proposals should be "sufficiently complete to demonstrate the manner in which the offeror will comply with and fulfill the solicitation requirements." Id. In view of the RFP's specific instructions which required offerors to provide clear, detailed proposals, and based upon our review of the record, including NTL's proposal and the evaluation documents, we have no basis to question the SEB's

downgrading of NTL's proposal in these areas.⁴ See Schleicher Community Corrections Ctr., Inc., B-270499.3, et al., Apr. 18, 1996, 96-1 CPD ¶ 192 at 4.

NTL also challenges the agency's method for allocating points for cost, arguing that it resulted in distorted scores and placed an undue emphasis on technical merit. As noted above, cost scores were calculated by assigning the maximum number of available points (15) to the offer with the lowest proposed cost; since NTL's proposed cost of \$7,850,280 was low, it received all 15 points. Proportionately lower scores then were assigned to higher-cost proposals, with PharmChem receiving 14.55 points based on its proposed price of \$8,091,229, the second lowest received. NTL argues that this scoring method distorted the cost difference between the proposals by giving PharmChem a score only 0.45 points lower than NTL's, despite the fact that NTL's price was approximately \$425,000 lower than PharmChem's.

As a preliminary matter, there is nothing inherently unreasonable about scoring the cost factor based upon relative difference in cost proposals, so long as the use of such an approach does not produce a distorted or irrational result. See, e.g., First Ann Arbor Corp., B-194519, Mar. 4, 1980, 80-1 CPD ¶ 170 at 3; Design Concepts, Inc., B-186125, Oct. 27, 1976, 76-2 CPD ¶ 365 at 2. The use of normalized point ratings for cost--i.e., a point-scoring system under which the lowest-cost proposal is assigned the maximum number of points, with higher-cost proposals assigned points based on their closeness to the low offer--is a relatively common and acceptable approach. See, e.g., Robertson Leasing Corp., B-279756, B-279756.2, July 17, 1998, 98-2 CPD ¶ 46 at 2, 6; CDA Inv. Techs., Inc., B-272093, B-272093.2, Sept. 12, 1996, 97-1 CPD ¶ 102 at 3; American Overseas Book Co., Inc., B-266297, Feb. 9, 1996, 96-1 CPD ¶ 60 at 2; Research Assocs. of Syracuse, Inc., B-259470, Mar. 28, 1995, 95-1 CPD ¶ 169 at 3.

⁴NTL also challenges the evaluation of its proposal under the staff qualifications technical factor. Although, in its consensus report, the SEB identified no deficiencies with respect to the two key personnel required by the RFP, the SEB assigned NTL's proposal an average score of 17.3 rather than 20 points, the maximum number of points available under the staff qualifications factor. Assuming that NTL's proposal should have earned 20 points in this area, raising its final technical score to 68 points, this revision would not affect its relative ranking as the lowest-rated proposal. NTL was therefore not prejudiced by this alleged error. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's action, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

Contrary to NTL's arguments, the scoring scheme used by the agency here accurately reflects the relative weights of the technical and cost factors--85 and 15 percent, respectively--as set forth in the RFP. Further, there is no indication that the cost scoring methodology in any way distorted the evaluation results. On the contrary, the record shows that the SEB and the contracting officer thoroughly considered the specific strengths and weaknesses in the offerors' technical proposals, and reviewed their proposed costs in detail as well. In sum, while it is possible that a particular scoring methodology could distort an agency's evaluation of proposals, there is no indication that that occurred here. Rather, since PharmChem's proposed price was approximately 3 percent higher than NTL's, it was not unreasonable for the agency to assign it approximately 3 percent fewer points ($.03 \times 15 \text{ points} = 0.45 \text{ points}$) than the 15 points NTL received ($15 - 0.45 = 14.55$).

NTL also argues that the cost/technical tradeoff decision was flawed. In deciding between competing proposals, cost/technical tradeoffs may be made, the propriety of which turns not on the difference in technical scores or ratings, per se, but on whether the source selection official's judgment concerning the significance of that difference was reasonable and adequately justified in light of the RFP evaluation scheme. DynCorp, B-245289.3, July 30, 1992, 93-1 CPD ¶ 69 at 8. Award may be made to a higher-rated, higher-cost offeror where the decision is consistent with the evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced offer outweighs the cost difference. Sabreliner Corp., B-242023, B-242023.2, Mar. 25, 1991, 91-1 CPD ¶ 326 at 11. As explained further below, the award decision here is reasonably supported by the record. See Southwest Marine, Inc.; American Sys. Eng'g Corp. B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 19.

The SEB documented its recommendation for award in a statement detailing its findings with respect to each proposal. After examining the strengths and weaknesses of the protester's and the awardee's proposals, the SEB concluded that the proposals differed in the technical areas, the proposed indirect costs applied to labor rates, and the unit prices proposed for various tests. In its final recommendation, the SEB concluded that PharmChem had submitted an excellent response to the RFP and had responded fully to the agency's discussion questions. The SEB found that PharmChem demonstrated a comprehensive understanding of the contemplated project, and that the firm, with its excellent technical approach, could clearly handle work of this size and complexity. On the other hand, the SEB concluded that, overall, NTL's proposal was a poor response to the RFP and that NTL did not fully respond to the agency's discussion questions. The SEB also found that, as contrasted with PharmChem's proposal, NTL had demonstrated limited understanding of the project, concluding that NTL's overall approach was poor. As discussed above, the record reasonably supports the SEB's conclusion and the ratings assigned NTL's proposal. Under these circumstances, the SEB's conclusion that PharmChem's proposal was most advantageous to the government is

unobjectionable. See Reflectone Training Sys., Inc.; Hernandez Eng'g, Inc., B-261224, B-261224.2, Aug. 30, 1995, 95-2 CPD ¶ 95 at 11-12.

In a supplemental protest, NTL also argues that since at least two of the firms that responded to the RFP were small businesses, the contracting officer improperly failed to investigate whether the RFP should have been issued as a small business set-aside. NTL's argument is a challenge to the unrestricted nature of the procurement, which was clear on the face of the RFP. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1), a protest alleging an impropriety in a solicitation that is apparent prior to the time set for receipt of initial proposals must be filed before that time. Because NTL did not protest that the RFP should have been set aside for small businesses until after award, this protest issue is untimely. Dunn Eng'g Assocs., B-266273, Feb. 9, 1996, 96-1 CPD ¶ 59 at 2 n.1.

NTL maintains, however, that this argument is timely because it first learned that another small business had responded to the RFP as a result of its receipt of the agency's report on NTL's initial protest. However, the fact that other small businesses capable of performing the required services could have been interested in responding to the RFP was public information that was readily available to NTL well before the RFP's May 29, 1998 closing date. In this connection, NTL itself provided to our Office a copy of a Federal Register notice published September 2, 1994, by the Department of Health and Human Services, listing the names, addresses and telephone numbers of approximately 80 laboratories, including NTL and the other small business firm that responded to the RFP here, which met minimum standards to engage in urine drug testing for federal agencies. See 59 Fed. Reg. 45,681-82 (1994).⁵ Thus, the information which forms the basis for its argument--that at least one other small business capable of performing the work might have been interested in responding to the RFP--was either publicly available or could have been discovered if it had been diligently pursued prior to the closing date for receipt of proposals. Accordingly, this argument is untimely. See XMCO, Inc., B-228357, Jan. 26, 1988, 88-1 CPD ¶ 75 at 3.

The protest is denied.

Comptroller General
of the United States

⁵NTL also provided our Office with a copy of another Federal Register notice dated September 8, 1998, which transmits an updated list of certified laboratories. See 63 Fed. Reg. 47,514 (1998).