Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dr. Carole J. Barry

File: B-271248

Date: June 28, 1996

Marvin F. Atlas, Esq., for the protester.
Richard Brown, Esq., and Michael Colvin, Department of Health and Human Services, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a best value procurement, where the solicitation stated that technical considerations were more important than cost and the agency rationally evaluated protester's technical proposal as containing numerous weaknesses and deficiencies, agency reasonably determined to make award to a technically superior, slightly higher-priced offeror.

DECISION

Dr. Carole J. Barry protests the evaluation of proposals and the resulting award of a contract to Psychiatric Associates of New Mexico, Inc. under request for proposals (RFP) No. 96-01/LBB, issued by the Department of Health and Human Services, Albuquerque Area Indian Health Service (IHS).

We deny the protest.

The RFP, issued on September 14, 1995, sought proposals for a fixed-price, indefinite quantity contract, to provide psychiatric services to IHS patients for a base year, with three 1-year options. Technical factors were stated to be more important than cost. The RFP contained the following technical evaluation factors and associated points: (1) experience (50 points); (2) professional requirements (30 points); (3) availability (10 points); and (4) health requirements (10 points), for a maximum possible total of 100 points.

The agency received four proposals, and after evaluation of initial proposals, established a competitive range of three proposals, including those of Dr. Barry and of Psychiatric Associates (which offered the services of Dr. Olson). The agency received two best and final offers (BAFO), with Dr. Barry's receiving a technical score of 83.5 points (considered "moderately acceptable") at an evaluated total price

of $228,800, and Psychiatric Associates receiving a technical score of 90 points (considered "highly acceptable") at an evaluated price of $264,000. The agency concluded that Psychiatric Associates's proposal represented the best overall value to the government and made award to Psychiatric Associates on February 1, 1996. This protest followed.

TECHNICAL EVALUATION OF PROPOSALS

The evaluation of technical proposals is primarily the responsibility of the contracting agency. Our Office will not make an independent determination of the merits of technical proposals; rather, we will examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115. Here, as set forth below, we find the agency's evaluation unobjectionable.

Experience

Under this evaluation criterion, the RFP called for the evaluators to assess whether, within the past year, the offerors provided certain psychiatric services, such as management of psychotropic medications, and treated significant numbers of adolescents and adults (including the elderly). Dr. Barry's proposal received 42.5 out of a possible 50 points under this factor. The evaluators concluded that Dr. Barry's experience was not described in sufficient detail to warrant a higher score. For example, one evaluator noted that Dr. Barry failed to adequately describe her part-time private practice and her position as a part-time consultant to the New Mexico State Hospital in Las Vegas, New Mexico. Transcript (Tr.) at 19.[1] In addition, the agency found that Dr. Barry's proposal was ambiguous regarding whether she had treated significant numbers of adolescents within the last year. In this regard, the agency points to the following language from Dr. Barry's proposal:

> "As stated elsewhere in my proposal, at the risk of violating patient confidentiality, I do not know how to document the fact that I have treated a significant number of adolescents and adults (including elderly) during the last year."

The agency was unable to determine from Dr. Barry's proposal whether she had treated a significant number of adolescents as part of her patient population.

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[1]Transcript citations refer to the transcript of a hearing conducted by our Office in connection with this protest.

In our view, the imprecise language in Dr. Barry's proposal, in conjunction with the lack of detail provided by Dr. Barry concerning her private practice and her part-time consultation position, made it difficult for the agency to conclude that Dr. Barry had treated a significant number of adolescents during the last year. Accordingly, we see no basis to object to the agency's downgrading of her proposal slightly under this factor.

Psychiatric Associates's proposal of Dr. Olson received the maximum score of 50 points under this evaluation factor. The technical evaluation panel (TEP) noted the extensive psychiatric services that Dr. Olson had provided for the past 3 years under the predecessor contract. In addition, the TEP noted that Dr. Olson has been well received by patients and primary care physicians, and that he had been awarded a certificate of appreciation from an IHS site for his outstanding and dedicated service to patients. We see no basis to object to the agency's awarding Psychiatric Associates's proposal the maximum score under this evaluation factor. Incumbent contractors with good performance records can offer real advantages to the government, and proposal strengths flowing from a firm's prior experience properly may be considered by an agency in proposal evaluation. See Aumann, Inc., B-251585.2; B-251585.3, May 28, 1993, 93-1 CPD ¶ 423.

Professional Requirements

With respect to this evaluation criterion, offerors were asked to provide: (1) documentation of their knowledge of local Indian cultures and customs, and their ability to work within those parameters (10 points), (2) documentation of board certification in psychiatry (10 points), and (3) documentation of insurance (10 points).[2]

Because Dr. Barry submitted documentation showing that she was board certified, her proposal received the maximum score (10 points) for the board certification subfactor. The TEP awarded Dr. Barry's proposal 2.5 out of 10 points under the knowledge of local Indian culture subfactor. While the TEP acknowledged that Dr. Barry's proposal indicated that she possessed some knowledge of Indian culture and customs, it noted that Dr. Barry's proposal referred to her experience with Indian tribes from the eastern part of the country, such as the Mohawk and Iroquois tribes. Tr. at 11. The evaluation criterion called for knowledge of local Indian culture and stated that the primary Indian population of the IHS Albuquerque Service Unit consists of Navajo and Pueblo Indians. The TEP noted that there was no mention in Dr. Barry's proposal of having served the Pueblo people. While the proposal stated that Dr. Barry had treated some Navajo Indians at the state hospital, the TEP was aware that the state hospital receives a small number of Indian

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[2]Both offerors received the maximum score (10 points) for the insurance subfactor.

patients. In our view, since Dr. Barry's proposal failed to describe work with the local Navaho population, or to provide any mention of Dr. Barry's knowledge of the Pueblo population, the agency's significant downgrading of the protester's proposal in this area is unobjectionable.

In contrast, Psychiatric Associates's proposal received the maximum 10 points under the knowledge of local Indian culture subfactor. The TEP noted that the proposal stated that Dr. Olson has been serving the Indian population of not only the IHS Albuquerque Service Unit, but also of another IHS unit that is located outside of Albuquerque, and that both of these service units predominantly provide care for Pueblo and Navaho Indians.

Because Dr. Olson was not board certified, however, Psychiatric Associates's proposal received only 2.5 out of 10 points under the board certification subfactor. Dr. Barry asserts that Psychiatric Associates's proposal should have been rejected rather than given a reduced score for this factor because board certification was a mandatory requirement of the solicitation. The agency states that board certification was desirable but was not intended to be a mandatory requirement, and was not to be evaluated on a pass/fail basis. At the hearing, the contracting officer explained that the RFP was not intended to make board certification a mandatory requirement. Tr. at 30.

Where, as here, a dispute exists as to the actual meaning of an RFP provision, we will read the RFP as a whole and in a manner giving effect to all of its provisions in determining which interpretation is reasonable. National Projects, Inc., 69 Comp. Gen. 229 (1990), 90-1 CPD ¶ 150. Applying this standard here, we find the agency's position regarding board certification to be reasonable. The RFP did not require that the proposed physician be board certified; rather, it called for documentation of board certification in the context of an evaluation criterion under which an offeror could receive a maximum of 10 points as a result of having produced such documentation. Nothing in the RFP otherwise requires board certification or calls for the elimination from consideration of a proposal which did not include such documentation. Accordingly, the record provides no basis to conclude that Dr. Olson's lack of board certification required the elimination of Psychiatric Associates's proposal.

The TEP awarded Psychiatric Associates a minimal score under this subfactor because one evaluator was aware that Dr. Olson was in the process of preparing for the board certification examination. While the protester asserts that a score of zero should be the only appropriate score for someone not board certified, we note that even if the 2.5 points were deducted from Psychiatric Associates's score, its score remains substantially higher than Dr. Barry's, and the reduction would not affect the stated narrative explanation for the perceived superiority of Psychiatric Associates's proposal. Accordingly, Dr. Barry was not prejudiced by this scoring.

Health Requirements

With respect to this evaluation criterion, offerors were asked to provide written evidence of a recent medical examination and current immunization records to establish their fitness to perform this contract. The parties disagree about whether Dr. Barry submitted a health statement with her proposal. The agency contends that neither Dr. Barry nor Dr. Olson submitted an appropriate health statement. Dr. Barry insists that she did submit a health statement with her proposal. Both offerors noted their general good health in their proposals and, apparently on this basis, Psychiatric Associates's proposal received 7.5 points out of 10 points under this subfactor, while Dr. Barry's proposal received 8.5 points.

Dr. Barry has submitted to our Office, in conjunction with her hearing comments, what she states is a copy of the health statement that she included with her proposal. The submitted statement, in the form of a letter, from Dr. Barry's physician declares that Dr. Barry's health is excellent. This letter also contains a postscript which states as follows:

> "P.S. My records indicate that Dr. Barry has had, within the past six months, inoculations for both rubella and dpt, which may have been necessary for her travel to Europe."

We note that this postscript is not in the same type face as the main text of the letters. On this record, it is not clear that the postscript was actually entered by Dr. Barry's physician. Accordingly, based on the record, we cannot say that the protester was entitled to a higher score.

COST/TECHNICAL TRADEOFF

While the protester argues that as the lowest priced offeror, it was entitled to the award, the RFP did not call for award to be made to the offeror with the lowest-priced, technically acceptable proposal. Rather, the RFP stated that the award would be made to the offeror whose proposal, conforming to the RFP, was deemed most advantageous, i.e., the best value to the government, with technical evaluation factors being considered more significant than price.

Where the RFP does not provide for award to the lowest-priced, technically acceptable offeror, an agency has the discretion to make the award to an offeror with a higher technical score and a higher price where it reasonably determines that the price premium is justified considering the technical superiority of the awardee's proposal and the result is consistent with the evaluation criteria. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. Here, while Dr. Olson's price was higher than the protester's, the solicitation provided that technical factors were more important than price, and the agency concluded that Dr. Olson's better

technical proposal demonstrated a substantially greater ability to meet the IHS' needs which warranted payment of the associated price premium.[3] The record affords us no basis to question the reasonableness of this determination.

The protest is denied.

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[3]Dr. Barry also contends that the agency's selection of Dr. Olson was the result of bias. In support of this allegation, the protester reiterates her complaints concerning the proposal evaluations, and asserts that the agency intentionally lost or misplaced her health statement. Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Northwestern Travel Agency, Inc., B-244592, Oct. 23, 1991, 91-2 CPD ¶ 363. As explained above, the evaluation was reasonable and consistent with the solicitation criteria, and therefore provides no evidence of bias. The record simply does not support Dr. Barry's contention that the agency deliberately lost her health statement. In this regard, we also note that, in view of the dubious nature of the health statement submitted to our Office by Dr. Barry, it is highly questionable whether her already high score under this factor would have improved had this statement been evaluated as part of her proposal.