

Shimamura

DECISION



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

FILE:

B-220849

DATE: February 28, 1986

MATTER OF:

ACKCO, Inc.

DIGEST:

1. Where the solicitation estimates that a full-time Project Director will be required and offeror's best and final offer (BAFO) reduced the Project Director's time on the contract to 25 percent with a parallel decrease in cost, agency conclusion that offeror's cost estimate was undesirably low for the contract and impacted unfavorably on technical ability was not unreasonable where BAFO made no mention of protester's assertion that Project Director would spend more time on the contract with no additional cost to the government.
2. Protester's allegation that its proposal was improperly downgraded based on factors that were not specifically included in the solicitation's evaluation criteria is without merit where the factors were clearly part of the criteria, and were repeatedly mentioned during negotiations.
3. Although protester may have relied on oral advice that price was a major evaluation factor, where solicitation specifically advises that cost is secondary to technical considerations, the contracting agency may properly award the contract to a technically superior proposal notwithstanding its higher cost.

ACKCO, Inc. American Indian Professional Services (ACKCO), protests the award of a cost-reimbursement contract to Native American Consultants, Inc. (NACI) under request for proposals (RFP) No. 105-85-1003 issued by the Department of Health and Human Services (HHS), Office of Human Development Services for the provision of training and technical assistance to

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Title VI grantees under the Older Americans Act of 1965, as amended, 42 U.S.C.A. § 3057 (West Supp. 1985). ACKCO, the incumbent contractor, contends that the proposal evaluators used factors that were not specifically included in the RFP's evaluation criteria and questions the basis of the award of the contract because the NACI proposal was higher in cost. ACKCO has asked that our Office re-evaluate the two proposals and has requested that our Office void the existing award and require that the agency resolicit.

The protest is denied.

Under the Older Americans Act, the Administration on Aging is authorized to provide grants to states and area agencies for supportive services, including nutrition services, for older individuals under Title III, 42 U.S.C.A. § 3021 (West Supp. 1985), and grants to eligible Indian tribes for comparable services under Title VI, 42 U.S.C.A. § 3057, supra. The purpose of the protested contract is to provide training and technical assistance to Title VI grantees for the development of comprehensive and coordinated service systems for older Indians.

The RFP listed four technical evaluation factors for award worth 100 points. With regard to cost, the RFP specifically advised offerors that the government would consider cost as secondary to the quality of the technical proposal. The RFP also advised offerors that the government would evaluate costs on the basis of cost realism, that is the offeror's ability to project costs which are reasonable and which evidence an understanding of the nature and extent of the work to be performed.

Three proposals were received in response to the RFP, all of which were determined to be in the competitive range. After negotiations and the submission of best and final offers, NACI's technical proposal received a score of 84.3 out of a possible 100 points and ACKCO's proposal was scored at 77.7. Notwithstanding the cost difference between NACI's final proposed cost of \$343,831 and ACKCO's proposed cost of \$269,500, the contract was awarded to NACI because HHS determined that its proposal was of the highest technical quality. NACI's proposed cost was within the government's estimate of \$359,000.

ACKCO alleges that its proposal was improperly downgraded based on factors that were not specifically included in the RFP's evaluation criteria. ACKCO contends

that the evaluation criteria did not specifically indicate that an awareness or understanding of Title III of the Older Americans Act was required or that the proposed staff must have experience in the day-to-day operation of a Title VI program. In its comments on the agency protest report, the protester also alleges that it was led to believe that price was a major evaluation factor as a result of a statement that was made by an HHS representative during a telephone conversation prior to submission of ACKCO's best and final offer that a "low ball" proposal might be submitted. As a result, ACKCO states that in its best and final offer, it reduced its proposed cost by charging only 25 percent of the Project Director's time to the contract and to reflect the fact that its experienced staff does not require extremely close supervision. ACKCO contends that the Project Director would spend more time on the contract but that ACKCO would not charge the government. ACKCO finally claims that its lower cost was realistic.

HHS determined that ACKCO's lower proposed cost was unrealistic and impacted unfavorably on ACKCO's technical ability to perform the contract in view of the level-of-effort estimate in the RFP, as opposed to ACKCO's current contract for similar services. Under the current contract, ACKCO served 83 grantees at a cost of \$200,000. The proposed contract would serve about 60 percent more grantees (125) with only about a one-third increase in cost. With regard to ACKCO's proposal reflecting just 25 percent of the Project Director's time, HHS evaluators noted that it was undesirably low for the contract. NACI, on the other hand, proposed a full-time Project Director and we note that the RFP estimated a level of effort of 260 person days for a Project Director, in other words, a full-time Project Director. While ACKCO may have intended to provide a Project Director who devoted more time to the project and to absorb the additional cost, that was not reflected in its proposal. ACKCO's proposal merely estimated 520 hours for a Project Director, or just 65 person days rather than the 260 person days estimated in the RFP. In view of the above, we do not find HHS's determination in this regard to be unreasonable. See Quanta Systems Corp., B-218974, Sept. 20, 1985, 85-2 CPD ¶ 312.

With regard to ACKCO's allegation concerning the evaluation criteria, HHS states that the evaluation factors stress the importance of the two programs to the performance of the instant contract. Additionally, the agency states that the RFP repeatedly mentions both

programs by name and both titles were stressed during negotiations with ACKCO. Therefore, the agency maintains that the protester was fully aware of how its proposal would be evaluated. Additionally, the agency notes that ACKCO was not prejudiced in the evaluation with respect to Title III because the protester was given full credit for organizational knowledge of Title III based on its response to questions during negotiations.

We agree with HHS. The evaluation criteria explicitly stated that proposals should indicate the offeror's understanding of the national network of services for older Americans and specific services for older Indians. In view of the fact that Title III of the Older Americans Act provides the statutory basis for the national network of services for older Americans, ACKCO should have known that an awareness of the Title III program was required. Additionally, because the criteria required staff with demonstrated experience and expertise in the provision of services to older Indians, particularly those funded under the Older Americans Act, ACKCO's allegation, that the criteria did not state that proposed staff must have experience in the day-to-day operation of a Title VI program, is without merit.

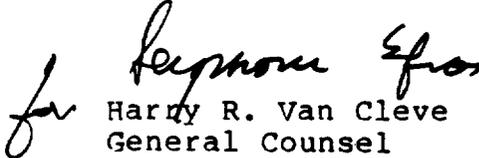
With regard to ACKCO's allegation that it was led to believe that cost was a major evaluation factor, the RFP clearly stated that cost was secondary. In addition, the mere statement that a "low ball" proposal might be submitted does not reasonably warrant the belief that cost had become the major evaluation factor. Further, we note that the RFP advised offerors that oral explanations given before the award of the contract would not be binding on the agency. When a solicitation expressly cautions offerors against relying upon oral advice from agency personnel, offerors who ignore the admonition and rely upon alleged erroneous advice which conflicts with specific language in the solicitation must suffer the consequences. Even if the protester was misled to its detriment, such alleged erroneous advice neither binds the agency nor requires the submission of new offers. Tri-State Laundry Services, Inc. d/b/a Holzberg's Launderers and Cleaners, B-218042, Feb. 1, 1985, 85-1 CPD ¶ 127; Inventive Packaging Corp., B-213439, Nov. 8, 1983, 83-2 CPD ¶ 544.

With regard to ACKCO's questioning the fact that award was made to a higher priced offeror, we have consistently held that in negotiated procurements, there is no requirement that award be made on the basis of the lowest cost.

The procuring agency has the discretion to select a higher rated technical proposal instead of a lower rated, low cost proposal if doing so is consistent with the evaluation scheme in the solicitation. Litton System, Inc., Electron Tube Division, 63 Comp. Gen. 585 (1984), 84-2 CPD ¶ 317.

In view of our discussion above, we find that the agency's selection of NACI's higher rated technical proposal was consistent with the RFP's evaluation criteria under which offerors were specifically advised that cost considerations were secondary to the quality of the technical proposal.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel