

DECISION



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

11/17/83/25904

25904

FILE: B-209823

DATE: August 2, 1983

MATTER OF: Harris/Ragan Management
Corporation

DIGEST:

1. Where solicitation requires a letter of commitment for proposed key personnel, but does not define that requirement, it is reasonable for the contracting agency to accept a proposed key person where person applied to offeror for employment, submitted resume, was interviewed and signed statement of availability for employment which offeror included in proposal as letter of commitment.
2. Solicitation requirement for 25,000 square feet of storage space for cartons may be satisfied by either single or multiple tier approaches so long as total storage space requirement is met without adversely affecting contract performance requirements.
3. Where solicitation states that proximity of offeror's facilities to using agency is important, but does not define proximity, the agency may reasonably find that a 28-mile distance satisfies the requirement even though the incumbent's facility was within 5 miles, so long as performance requirements of contract are not adversely affected.
4. Minor errors in evaluation of protester's technical proposal in this case have no effect on relative ranking of proposals.

Harris/Ragan Management Corporation (Harris/Ragan) protests the award of a contract to Research Analysis Institute (RAI) for inquiry screening and public dissemination support for the National Clearinghouse for Drug Abuse Information (National Clearinghouse) under request for

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proposals No. 271-82-6500 issued by the National Institute on Drug Abuse (NIDA), Department of Health and Human Services (HHS).

We deny the protest.

The solicitation provided that technical quality was more important than cost in determining the awardee, but that, if offerors' technical quality was approximately equal, cost could become the determining factor. Of 100 possible points, RAI's technical score was 93.8 and Harris/Ragan's was 91.4. RAI's cost-plus-fixed-fee was \$294,322; Harris/Ragan's was \$297,595. The contracting officer determined that the technical quality of the proposals was essentially equal and awarded to RAI based on its lower cost.

Harris/Ragan argues that RAI's proposal did not include required assurances that one of its proposed key personnel would, in fact, be available to perform the contract. The protester points to two solicitation provisions, which allegedly define the assurances required. The first is a provision requiring that letters of commitment be included for key personnel. The second is a requirement that the proposal include "[a] signed agreement between the offeror and any personnel other than direct employees that includes dates of employment, salary, and specific tasks to be performed." Harris/Ragan argues that any proposed key personnel who is not employed by the offeror when its proposal is submitted is "other than [a] direct employee."

According to Harris/Ragan, the person proposed by RAI as a team leader was not and is not employed by RAI and did not give permission for her name and resume to be used in RAI's proposal. Harris/Ragan alleges that the person was merely interviewed by RAI and signed a statement concerning future availability for employment in the event that RAI was awarded the contract. This does not meet the standards of commitment required by the solicitation, according to the protester. The effect of this, argues Harris/Ragan, is that RAI's proposal misrepresented its technical capability and, thus, RAI received a higher technical score than it merits.

HHS and RAI contend that only the letter of commitment requirement applies in this situation. They argue that the other than direct employees requirement refers to consultants, not to persons who are expected to be employed by an offeror at the time of contract award. They also contend

that the document concerning the person in question included in RAI's proposal is a letter of commitment meeting the solicitation requirement. According to RAI, the person was interviewed for employment with RAI, submitted a resume and signed a letter of commitment stating when she would be available to work. RAI states that it accepted this in good faith, included the person in its proposal and offered her the job when it received the contract award. RAI and HHS argue that an offeror can be expected to do no more than this in assuring that proposed personnel will perform the contract and that the solicitation required no more.

We agree with HHS and RAI. The only reasonable reading of the solicitation is that the other than direct employee provision is not relevant to this situation. That provision is a part of the instructions for cost proposals, not technical proposals, and is listed under required cost and pricing data. Also, under that section is a corresponding provision for estimated costs related to direct employees. It is clear that each provision refers to a different source of manpower cost during performance of the contract. The direct employee provision refers to costs associated with proposed personnel who will perform the contract as employees of the contractor regardless of whether they are employees at the time proposals are submitted. The other provision refers to costs associated with manpower from any other source, such as consultants.

The relevant portion of the provision that applies to key personnel states only that "[l]etters of commitment shall be included." There is no definition of letter of commitment anywhere in the solicitation. In the absence of a more definite statement of the required content of a letter of commitment, we find that it was reasonable for RAI to include the resume of a person interviewed for employment when that person signed a statement that she would be available for work prior to the expected contract award date. We also find it reasonable for NIDA to accept that statement as a letter of commitment and to score the proposal accordingly.

The solicitation required a minimum of 25,000 square feet of storage space for storage of the inventory of pamphlets to be distributed. RAI proposed 25,000 square feet of storage space on multiple tiers of shelves. Harris/Ragan proposed 25,000 square feet of space on a single tier. NIDA accepted both proposals as meeting the storage requirements. Harris/Ragan argues that the normal

interpretation of 25,000 square feet of storage space is a single tier and that NIDA should have notified offerors if any other solution was acceptable.

HHS reports that storing the pamphlets in multiple tiers does not have an adverse impact on the performance of the contract. Harris/Ragan has not rebutted that assertion. We find that the solicitation requirement is satisfied by either solution and that the solicitation requirement was not ambiguous. It simply required 25,000 square feet of storage space for cartons and, obviously, any arrangement that provides that amount of storage space without hindering contract performance would be acceptable.

Concerning the technical criteria of Proposed Facilities and Equipment, the solicitation states:

"Since offerors must demonstrate their ability to meet the response times and deadlines required by the Statement of Work, the proximity of their facilities to the National Clearinghouse shall be an important consideration."
(Emphasis added by protester.)

Harris/Ragan objects to NIDA's acceptance of an RAI facility 28 miles from the National Clearinghouse when the incumbent contractor's facility was only 5 miles away. HHS reports that the proximity subcriterion was included only to notify distant offerors that response time was important. According to HHS, the 28-mile distance poses no problems in contract performance. Harris/Ragan does not provide a rebuttal of this position.

Since "proximity" is not defined in the solicitation, we find that NIDA's acceptance of a 28-mile distance is reasonable, given the finding that contract performance will not be adversely affected. We note that HHS has recommended that future solicitations be more explicit regarding geographical limitations. We agree with that recommendation.

Harris/Ragan's proposal was downgraded for two minor weaknesses that HHS admits were in error. It was criticized for not including a letter of commitment from a proposed key person that was a current employee of Harris/Ragan and for not including a lease agreement, neither of which was required by the solicitation.

HHS contends that neither deficiency changed the finding that both technical proposals were essentially equal and Harris/Ragan does not disagree. RAI's proposal also was improperly downgraded for not including a lease, so that deficiency has no effect. Harris/Ragan's proposal was downgraded only slightly for the "missing" letter of commitment. Increasing its score to the maximum on that criterion would not change the finding of technical equality since both proposals were already scored near the maximum. Consequently, we find no prejudice accrued to Harris/Ragan as a result of these minor errors.

for 
Comptroller General
of the United States