

Protest of	)	Date: November 15, 1989
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HUNTINGTON LABORATORIES, INC.	)	
	)	
Solicitation No. 104230-88-A-1026	)	P.S. Protest No. 89-46

DECISION

Huntington Laboratories, Inc. (Huntington) protests the award of a contract under Request for Proposals 104230-88-A-1026 (the RFP) to Modern Management, Inc. for a custodial staffing and scheduling program. The protester questions the fairness of the evaluation of its technical proposal.

The RFP was issued by the Office of Contracts, Headquarters, on September 12, 1988, with an offer due date of October 18, extended to November 18, by Amendment A01. It sought proposals for the design and implementation of a custodial staffing, scheduling and quality control system, with supporting software and documentation at two pilot sites. The RFP also required the contractor to provide training for the operation and maintenance of the software and for the development of a nationwide implementation plan to deploy the system to 230 field offices and 74 divisions.

The evaluation criteria, defined in Section M-Evaluation and Award Factors, provided that award would be made to the responsible offeror who submitted the best combination of technical and pricing proposals. Under the evaluation scheme the technical proposals were to be evaluated on the basis of a total score of 3100 with the following weighted evaluation factors: (1) Design and Technical Approaches (1500 points); (2) Understanding of Problem (300 points); (3) Quality Assurance (300 points); (4) Software Design and Documentation (200 points); (6) Software Maintenance Plan and Methods (200 points); (6) Implementation Plan (200 points); (7) Corporate Capabilities (200 points); (8) Training Plan and Methods (100 points); and (9) Management Plan and Staff (100 points).

Seven offerors submitted proposals in response to the solicitation. All technical proposals were forwarded to the Maintenance Technical Support Center, Norman, OK for technical review and evaluation. The evaluation team found the proposals of three offerors to be technically unacceptable and the proposals of the remaining four firms to be technically acceptable. The scores of the technically acceptable proposals were as follows:

	<u>Total Points</u>
Offeror A	2133
Offeror B	1699
Modern Management	1534
Huntington	1516

Discussions were held with all offerors and the resulting revised proposals were returned to the technical evaluation committee for reevaluation. The scoring of the proposals of Modern Management and Huntington remained essentially the same. However, the reevaluation reflected the advance in relative ranking of Modern Management, Huntington, and the demotion in rank of Offeror B, so that the four firms were ranked: (1) Offeror A; (2) Modern Management; (3) Huntington and (4) Offeror B.

Following further discussions, the contracting officer requested best and final offers from the four offerors. The record reflects that the contracting officer, after review and analysis of the best and final offers, determined that Modern Management's offer presented the best overall value. (Although Offeror A's proposal was technically superior, its price was two and one half times greater than that of Modern Management.<sup>1/</sup>) The contract was awarded to Modern Management on June 5, and the contracting officer advised Huntington of the award in a letter received by the protester on June 5. The letter also told the protester that under the evaluation criteria contained in the solicitation, its proposal did not represent the most advantageous offer to the Postal Service. Huntington filed its protest in a letter received by this office on June 23, 1989.

Huntington states that during discussions, Postal Service personnel appeared to be impressed with its technical proposal. It did not make substantial changes to its revised proposal since the contracting officer had cautioned the offerors against submitting "entirely new" proposals which could raise additional uncertainties. The protester notes that its best and final offer was higher than its original price due to uncertainties in the specification requirements; it assumed that cost realism was an

important consideration to the Postal Service. However, in several phone conversations with the contracting officer, after the submission of the best and final offers, it expressed a willingness to work with the contracting officer and to renegotiate its price. Several follow-up phone calls failed to generate a response from postal officials and on June 5, prior to its receipt of the notice of award, it mailed a "corrected" best and final offer in the amount of \$859,005.

Concerning the merits of the evaluation, the protester urges that the evaluation committee did not properly understand its technical proposal and failed to apply the evaluation criteria set forth in the solicitation. It states that it was advised in a debriefing held on June 21, that award was based on technical superiority rather than price. During this debriefing it was also advised of certain deficiencies in its technical proposal. Huntington urges that the alleged deficiencies are groundless. One alleged weakness involved an overlapping of work to be provided by its subcontractors. This assertion, it maintains, is without substance. The specifications do not prohibit the use of subcontractors and the work to be performed by the subcontractors falls within certain precise areas.<sup>1/</sup>

<sup>1/</sup>Modern Management's best and final offer was \$859,486 compared to Huntington's best and final offer of \$1,177,424. The protester's original price was \$993,190; Modern Management's original offer was \$920,836.

<sup>2/</sup>To support these arguments, Huntington includes a detailed analysis of the work to be performed by it and its two subcontractors. It contends that the responsibilities of the "team members" were clearly defined in its revised proposal.

The protester also claims that it was advised in the debriefing that its technical proposal was not well organized. It asserts that if its proposal was not well organized, it was because the Statement of Work (SOW) was not well organized; its proposal followed the format of the SOW. The protester further states that it was advised that its proposed software was not well presented. It urges that this is simply not the case and that its revised proposal included a demonstration diskette for its software as well as commercial brochures and specification sheets. The protester asserts that it is the recognized industry leader nationally in this field and that this fact should have been known or recognized by the technical evaluation committee.

Huntington additionally refers to and quotes from various portions of its original and revised technical proposal and asserts that the evaluation team simply did not grasp the true contents of those technical discussions. The information provided in its proposal far exceeded the technical requirements of the solicitation. It expresses disbelief that it could be evaluated as less technically qualified than a firm who is "not even a player" in the custodial industry.

In his report, the contracting officer states that price was, in fact, a significant consideration in the solicitation and award process. Although Huntington was told in the debriefing that its technical proposal was rated lower than that of Modern Management, it was also told that cost was a factor in the award decision. Huntington's technical proposal was ranked third. Its price was second, \$317,938 above that of Modern Management. Also, while Huntington did submit a "revised price proposal" after best and final offers, the contracting officer did not consider it, since it was received after the award of the contract to Modern Management.

Concerning the technical evaluation, the contracting officer states that this process was very lengthy and included extended discussions with each of the four offerors. He asserts that the evaluation committee's notes clearly show the extensive detail involved in the evaluation process and urges that the evaluation procedure was proper and in accordance with the evaluation criteria set forth in the solicitation. The contracting officer notes that although the evaluators felt that Huntington could accomplish the requirements of the solicitation, its technical proposal introduced risk associated with multiple subcontractors performing the same work. He states that the protester's proposal did not present its existing system and software clearly and that its proposal did not exhibit a strong capability to support deployment or implementation on a national level. The contracting officer states that in a number of instances, the protester simply restated the solicitation requirements. He asks that the protest be denied.

The protester submitted additional comments and arguments in support of its position and participated in a protest conference with this office pursuant to Procurement Manual (PM) 4.5.7 j. A summary of these additional assertions follow.

Huntington states that it does not object to Modern Management as a company; rather it objects to the evaluation of this firm as technically superior to it. The protester contends that Modern Management has been successful only in the maintenance industry; Huntington's custodial software, on the other hand, dominates the industry. The protester claims that common sense dictates that the source selection of a development program should insure that a proven technically qualified firm receives the contract.

Huntington also repeats in detail the issues it raised in its protest. It notes that one of its subcontractors had prior experience with the Postal Service and that the downgrading of its technical proposal because of its subcontractors was arbitrary and unreasonable. Its proposal included a detailed Program Organization Chart and otherwise clearly demonstrated the approach it would take to meet the solicitation requirements and the work to be done by it and its subcontractors. The protester urges, in effect, that all the alleged weaknesses in its technical proposal, as explained to it in the debriefing, reflect the subjective conclusions of the evaluation committee.

An issue was raised in the protest conference with respect to the timeliness of Huntington's protest. The protester asserts that the information upon which it based its protest was not, and could not have been known to it until debriefing; its protest was filed within two days of the debriefing. The protester states that the June 5 notice of award provided no information other than price. Its protest, on the other hand, is based on technical considerations revealed in the debriefing. It asks that the merits of the protest be reached.

### Discussion

To the extent that the protester objects to the terms of the solicitation, i.e., that uncertainties in the solicitation required it to raise its price in its best and final offer, the protest is untimely. Our protest regulations require that protests based upon alleged deficiencies in a solicitation that are apparent before the date set for the receipt of offers must be received by the date and time set for the receipt of proposals. PM 4.5.4 b. Here the protest was filed after the award of the contract on June 5 and is untimely as to any alleged deficiencies in the terms of the solicitation. The protest is timely, however, with respect to the technical considerations involving the evaluation of Huntington's proposal.

As this office has frequently stated, our review of evaluations in a negotiated procurement is limited:

[T]his office will not substitute its judgment for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulation. H & B Telephone Systems, [P.S. Protest No. 83-61, February 6, 1984]; Amdahl Corporation, P.S. Protest No. 81-34, September 29, 1981. The determination of the relative merits of technical proposals is the responsibility of the contracting officer. This office does not resolve disputes on the scoring of technical proposals. Computer Systems & Resources, Inc., [P.S. Protest No. 86-4, March 27, 1986], citing, Mid-Atlantic Forestry Services, Inc., Comp. Gen. Dec. B-217334, September 9, 1985, 85-2 CPD &279. Management Concepts, Inc., P.S. Protest No. 86-29, July 10, 1986; see also Service America Corporation, P.S. Protest No. 86-96, January 14, 1987.

While the record reflects considerable disagreement between the parties, we are unable to conclude that the evaluation of the protester's technical proposal was arbitrary or in violation of our procurement regulations. First, a technical evaluation is based upon the information furnished or contained in the proposal, so that no matter how capable an offeror may be, it runs the risk of losing the competition if its proposal does not include information sufficient to evaluate this capability. H & B Telephone Systems, supra. The

fact that the protester's pre-existing software may have been highly successful in this industry does not mandate, as the protester suggests, that Huntington's proposal be awarded the highest overall score since the evaluation criteria, as clearly defined in the RFP, include eight factors other than software design, including, e.g., operation and maintenance training and an overall implementation plan to deploy the system on a nation wide basis.

The protester also contends that the alleged weaknesses in its technical proposal, as explained to it in the debriefing, reflect only the subjective conclusions of the evaluation committee. As this office has previously stated, the assignment of numerical scores or ratings to a proposal is an attempt to quantify what is essentially a subjective judgment. This is an accepted procedure. Book Fare, Inc., P.S. Protest No. 80-29, July 3, 1980; Didactic Systems, Inc., Comp. Gen. Dec. B-190507, June 7, 1978, 78-1 CPD &418. "The determination of the desirability of proposals is largely subjective, primarily the responsibility of the procuring [activity], and not subject to objection ... unless shown to be unreasonable, arbitrary, or violative of the law. High Plains Consultants, Comp. Gen. Dec. B-215383, October 18, 1984, 84-2 CPD &418; Credit Bureau Reports, Inc., Comp. Gen. Dec. B-209780, June 20, 1983, 83-1 CPD &670.

In this regard, we have received the technical proposals as well as the evaluation committee's reports covering the evaluation. This review does not indicate that the evaluations were arbitrary or violated applicable procurement regulations. The members of the evaluation committee fully commented upon both the strengths and weaknesses of each of the offeror's proposals, and these comments were taken into account in their numerical scoring of such proposals. The evaluation committee's scoring shows that they considered Huntington's proposal to be strong in the area of an understanding of custodial technology and experience in this field. Also, the committee noted that Huntington had become familiar with current Postal Service cleaning management documents which showed initiative. The evaluation committee had concerns, however, in the work to be performed by the protester's subcontractors and the experience of the subcontractors in the area of the assigned work. The evaluator's reports also note that the protester, in its proposal, merely restates the solicitation requirements in several areas, such as in the implementation sections.

Although reasonable minds may differ as to the exact scoring given by an evaluation committee to a particular proposal, in our view the record reasonably supports the relative scoring and ranking of the four technically acceptable proposals as well as the contracting officer's determination to make the award to Modern Management based on the best combination of technical scoring and price. Clearly, the protester has not submitted evidence sufficient to support a finding that the technical evaluation was arbitrary. Computer Systems & Resources, Inc., supra.

The protest is denied.

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**[Reconstructed from original 12/4/95 WJJ]**