

DOCUMENT RESUME

03873 - [A2773998]

[Protest against Rejection of Proposal]. B-188797. September 28, 1977. 5 pp.

Decision re: Genesee Computer Center, Inc.; by Robert F. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: Environmental Protection Agency.
Authority: B-186668 (1976). B-181170 (1974). B-181045 (1974). 54
Comp. Gen. 352.

The protester objected to the evaluation of its proposal and to the agency's refusal to permit modification of the proposal following the receipt of revised proposals. The record showed that the protester's proposed changes raised problems of delay and additional costs to the agency; the agency's determination that their revised proposal was unacceptable was sustained. The agency was not required to extend discussions following receipt of revised proposals. (Author/SC)

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DECISION



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

FILE: B-188797

DATE: September 28, 1977

MATTER OF: Genesee Computer Center, Inc.

DIGEST:

1. Agency's determination that protester's revised proposal was unacceptable because of protester's plan to perform segment of work itself rather than by subcontract as initially proposed is sustained since record shows that proposed change raised problems of delay and additional costs to agency.
2. Discussions with offeror consisting of written interrogatories were adequate where interrogatories covered major areas of weaknesses in offeror's initial proposal and offeror was given opportunity to respond.
3. Once discussions have taken place with offerors and revised proposals have been received, agency is not required to extend discussions to give an offeror opportunity to further explain or revise aspects of its proposal.
4. Contractor's loss of services of subcontractor subsequent to award of prime contract does not affect validity of award; adequacy of contractor's performance is matter of contract administration.

Genesee Computer Center, Inc. (Genesee) protests the rejection of its proposal submitted in response to request for proposals (RFP) No. WA 76-D316 issued on August 17, 1976, by the Environmental Protection Agency (EPA). Genesee challenges both the adequacy of the evaluation and EPA's failure to give it an opportunity to explain or revise the unacceptable aspects of its proposal.

The RFP sought proposals for the refinement and verification of the Substructural Analysis Method (SAM) for toxicity prediction. Two proposals were received by the closing date of September 17, 1976. Initial evaluation showed that both proposals had certain deficiencies which required clarification prior to completion of the technical evaluation. Interrogatories were sent to the offerors on November 17, 1976, with a cut-off date of November 30, 1976, for

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receipt of revised proposals. Upon evaluation of the revised proposals it was determined that Genesee's proposal would no longer be considered for award because the evaluation panel considered it to be technically unacceptable. This determination was communicated to Genesee by letter dated March 10, 1977.

Debriefings were conducted on April 6 and April 7, 1977. Genesee was informed by EPA that there were three basic weaknesses upon which the determination of unacceptability was made:

- "1. Alternative approach for substructural encoding would require the creation of a new computer based system in EPA which would require additional time and effort to debug.
- "2. Proposal indicated a lack of understanding for potential problems involved with interactions with other agencies.
- "3. Proposal indicated additional approaches to correlating chemical parameters with biological activity outside the work scope; specifically discriminant analysis which, although offering more than required by the RFP, is supported by a lower level of effort than the approach outlined in the RFP."

In response, Genesee questioned the capability of the technical evaluation panel and contended that the evaluation process was inadequate. Genesee also requested the opportunity to modify its proposal. EPA refused to permit Genesee to modify its proposal further, and Genesee then protested to this Office. Award was subsequently made to the other offeror because of urgency.

Genesee's first contention is that the technical evaluation panel was not adequately qualified for the task of evaluating its proposal. Genesee does not challenge the individual qualifications of the panel members, but rather concludes that the evaluation panel lacked competence in the various disciplines required for proposal evaluation because of the reasons the panel advanced for rejecting Genesee's proposal. Essentially, therefore, Genesee is questioning the reasonableness of the evaluation.

As indicated above, the Genesee proposal was found to be unacceptable for three reasons. The primary reason developed from Genesee's inability to obtain a commitment from the subcontractor it originally proposed to perform certain modifications

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to a number of U.S. Army Chemical Information Data System (CIDS) keys. In response to a query on this point, Genesee then proposed to do the work itself by moving a copy of the CIDS program to EPA. The evaluation panel found this proposal unacceptable, principally because of "the additional lead time and effort necessary to make the approach workable." The additional time and effort would have involved the establishment of internal EPA accounts, the use of additional EPA funds, the negotiation of an inter-agency agreement and the potential problems involved in hardware conversion and the use of outdated software. The panel concluded that any substantial delay caused by these factors would severely impact the performance of the Office of Toxic Substances since that Office has to be in a position to evaluate pre-market reports by December of 1977. In addition, the panel felt that the absence of the originally proposed subcontractor reduced the substructure code expertise being offered.

Although Genesee insists that the evaluators' conclusions are not valid, Genesee has not gone beyond expressing disagreement with the evaluation; it has offered no evidence in support of its position. In this regard, we have repeatedly stated that in the evaluation of proposals, the determinations of procuring officials are entitled to "great weight" and are not to be disturbed unless shown to be arbitrary or in violation of the procurement statutes and regulations. See, e.g., UCE, Incorporated, B-186668, September 16, 1976, 76-2 CPD 249, and cases cited therein. The fact that the protester does not agree with the agency's evaluation does not render the evaluation arbitrary or illegal. Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87. Based on our review of the record, including the evaluators' explanations for viewing Genesee's proposal as they did, we cannot say that the evaluation was unreasonable.

Genesee further contends that it was denied an opportunity to correct the areas EPA regarded as deficient because they were not raised in the interrogatories which were sent to it. EPA sent Genesee the following interrogatories:

"1. Do you have a commitment from Fein and Marquart to provide services for this project?"

"2. Reference page 8 of your proposal in your second interpretation, what other aspects of the SAM will change other than a new effects "test set?"

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"3. Explain in more detail the selection of herbicide data for this project.

"4. Have any other types of biological data applicable to this project been identified. How would the level of effort change if they were included?

"5. Explain how partition coefficients and molar reactivity constants will be used to refine rat oral LD50 data as indicated on page 4 of your proposal."

We believe these interrogatories provided Genesee with ample opportunity to clarify those aspects of its proposal with which EPA was concerned. The first question concerned Genesee's subcontractor commitment. The other questions solicited additional details from Genesee regarding its proposed techniques and its proposed level of effort. It was Genesee's responses, rather than unidentified weaknesses of the initial proposal, that led to the determination of technical unacceptability.

In this regard, EPA was under no obligation to conduct further discussions with Genesee to clean up those unacceptable areas since once discussions have taken place and revised proposals have been received, there is no requirement that the negotiation process be extended to provide an offeror with an opportunity to further explain or revise aspects of its proposal. Programming Methods, GTE Information Systems, Inc., B-181845, December 12, 1974, 74-2 CPD 331; Bell Aerospace Company; Computer Sciences Corporation, 54 Comp. Gen. 352 (1974), 74-2 CPD 248.

Finally, Genesee advises that the firm awarded the contract "no longer has the services of its subcontractor available to them" because "the association between the prime contractor and the subcontractor has apparently been dissolved." Genesee suggests that the contractor cannot now perform as well as Genesee would perform, and that therefore either a contract should be awarded to Genesee or a new procurement should be conducted. In response, we need point out only that the validity of the award is not affected by the asserted developments, that the contractor remains obligated to perform, and that the adequacy of that performance is solely a matter for EPA in its administration of the contract.

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The protest is denied.

R. F. Killam
Acting Comptroller General
of the United States