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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Comprehensive Health Services, Inc.

File: B-294608

Date: December 1, 2004

Cyrus E. Phillips, IV, Esq., for the protester.
Helaine G. Elderkin, Esq., Carl J. Peckinpugh, Esq., and Charles S. McNeish, Esq.,
for Computer Services Corporation, an intervenor.
Scott C. Briles, Esq., Centers for Disease Control and Prevention, for the agency.
Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Contracting agency engaged in meaningful discussions concerning adequacy of proposed staffing, such that the protester should have known and understood the agency's concerns, where it advised offeror during oral discussions that protester's labor hours for full time employees were understated.

DECISION

Comprehensive Health Services, Inc. (CHS) protests the award of a contract to Computer Services Corporation (CSC) under request for proposals (RFP) No. 2004-N-01108, issued by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), for occupational health services for CDC employees in the Atlanta, Georgia, area. CHS argues that the agency failed to conduct adequate discussions.

We deny the protest.

The RFP was synopsisized on the Federal Business Opportunities (FedBizOpps) website on January 15, 2004. The RFP contemplated the award of a cost-plus-fixed-fee, indefinite-delivery/indefinite-quantity contract for a base year, with four 1-year options. In a 34-page statement of work (SOW), the RFP specified that the contractor would be required to provide all personnel, equipment and supplies to operate the CDC Occupational Health Clinics, including occupational medical services, the employee assistance program (EAP), and worksite and health promotion programs.

The solicitation required that proposals include, among other things, a complete “staffing plan which demonstrates an understanding of the labor requirements of this RFP.” RFP at 84. To assist offerors, the RFP provided relevant information from previous years, as well as estimates of the number of annual patient exams and visits. In response to questions, the agency noted that “[f]or planning purposes, we anticipate annual visits will increase by 10% per year for years 2004 and 2005; for years 2006 through 2009, we anticipate annual visits will increase by 2.5% per year.” Agency Report (AR), Tab 2, Questions and Answers, at 2.

The RFP provided for award to the offeror whose proposal, conforming to the solicitation, represented the “best value” to the agency based on an evaluation of the proposed technical approach (50 points), management plan/personnel qualifications (35 points), corporate experience (15 points), and cost. *Id.* at 91. Technical merit was significantly more important than cost or price.

The agency received five proposals, which were evaluated by a four-member technical evaluation panel (TEP). Following the initial evaluation, CHS’s proposal, with 83.01 points, was rated technically outstanding, while CSC’s, with 91.89 points, was rated technically superior. AR, Contracting Officer’s Statement of Facts, at 4. Both proposals were included in the competitive range. AR, Tab 6, Competitive Range Determination, at 5. Written and telephonic discussions were held. Seven written questions were forwarded to the protester prior to the oral discussions, including the following question:

Explain in detail your reasoning in proposing 2.5 EAP staff members and how this number can adequately provide for the CDC population served (and defined) in the solicitation.

During the subsequent oral discussions, the agency raised two additional issues with CHS (as memorialized in contemporaneous notes): “[CHS’s] labor hours for full time employees were understated,” and its “overhead and fringe benefits were overstated.” AR, Tab 10, Discussions Questions, June 16 Memorandum for Record, at 1. Best and final offers (BAFO) were requested and received. In the final technical evaluation, the evaluators determined that CHS’s proposed staffing estimates could not adequately support the CDC population served or the scope of work outlined in the solicitation. AR, Contracting Officer’s Statement, at 5. Award was made to CSC as the “best value” to the government and, after a debriefing, CHS filed this protest with our Office.

The protester argues that, because the agency referred to staffing and labor hours interchangeably in discussions, it was confused as to the agency’s actual concern; discussions therefore were not adequate to put CHS on notice that it had “understated the number of employees that [CDC] thought was necessary to deliver occupational health services.” Protester’s Comments at 4.

When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, they must lead the offeror into the areas of its proposal that require correction or amplification. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8.

We do not agree with CHS that the agency's referring to staffing and labor hours interchangeably was misleading. Rather, we think the agency's references to "labor hours for full time employees" (oral discussions) and the adequacy of CHS's proposed EAP staff (written discussions) both reasonably could be interpreted in only one way: the agency was concerned that CHS had not proposed enough staff to perform adequately. The agency's questions were adequate to bring this concern to CHS's attention, and therefore were meaningful.¹

CHS also argues that the discussions were misleading because the agency only specified that staffing was too low in the EAP area, rather than in all areas. This argument, too, is without merit. While the agency referred only to the proposed EAP staffing in its initial written discussions, its statement during subsequent oral discussions that CHS's "labor hours for full time employees were understated," did not limit the agency's concern to any specific area. There is no indication in the agency's contemporaneous notes, or elsewhere in the record, that the oral discussions were intended as a reiteration of the concerns previously raised in the written discussions; indeed, it appears that the two sets of discussions were meant to be different. As we find no other basis for the protester to have interpreted the agency's oral question as referring only to its EAP staffing, the discussions with CHS were unobjectionable.

The protest is denied.

Anthony H. Gamboa
General Counsel

¹We note, moreover, that CHS increased its full time equivalent (FTE) staffing somewhat in its BAFO. In its March 2004 business proposal, CHS proposed 25.5 FTEs for 2004, 27 FTEs for 2005, 28.5 FTEs for 2006, and 30.5 FTEs for 2007 and 2008. CHS Business Proposal at III-4. Including subcontract staff and outsourced staff, CHS's total proposed staffing was 27 FTEs for 2004, 28.5 FTEs for 2005, 30 FTEs for 2006, and 32 FTEs for 2007 and 2008. Id. (CHS's technical proposal included different numbers, for reasons that are not apparent from the record: 26 FTEs for the base year, 27.5 FTEs for 2005, 29 FTEs for 2006, and 31 FTEs for 2007 and 2008. CHS Technical Proposal, Appendices, Staffing Basis of Estimate Summary.) In its BAFO, CHS proposed 26 FTEs for 2004, 27 FTEs for 2005, 28.5 FTEs for 2006, 30.5 FTEs for 2007, and 33.5 for 2008. CHS BAFO at III-5. Including subcontract staff and outsourced staff, CHS offered 27.5 FTEs for 2004, 28.5 for 2005, 30 for 2006, 32 for 2007, and 35 for 2008. CHS BAFO at III-5. Id.

