

The Contracting Officer issued five amendments to the RFP. (*Id.*). Of particular relevance to this protest, Amendment 4 issued on April 2, 1999, amended the Evaluation Criteria of the RFP (Section M.5). The revised evaluation criteria were:

**A. Evaluation Factor: Technical Understanding of the Requirement and Approach  
0-15 Point**

- ☐ Demonstrates a clear understanding of the work to be performed. Includes an explanation of the technical approach and how the technical approach shall meet the requirements of Section C [scope of work]; addresses overall coordination with CMHS Treatment Services.
- ☐ Proposed services meet the specific needs of the consumers
- ☐ Ability to provide new and innovative strategies to engage the consumers in the required services that shall ensure integration into the community.
- ☐ Description of how to accommodate cultural differences and gender specific issues of the consumers
- ☐ Demonstrate understanding and working knowledge of culturally diverse dually diagnosed mentally ill and substance abuse consumers 18 years of age and older and years of experience providing this service population

**B. Evaluation Factor: Management Plan                      0-15 Points**

- ☐ Demonstrates a through understanding of how the project is to be organized, staffed and managed in accordance with the requirements contained in Section C.
- ☐ Management and coordination of consultant/subcontractor efforts included, if applicable.
- ☐ Provides an organizational chart, which displays internal and external organization relationships and demonstrates who has responsibility for administrative oversight and clinical supervision over each contract activity.
- ☐ States how support services shall be provided during required hours of coverage.
- ☐ Demonstrates the ability to provide effective and innovative strategies in the treatment of individuals who have a history of mental illness and substance abuse.

**C. Evaluation Factor: Quality Improvement Plan (QI)   0-15 Points**

- ☐ Provides description of Quality Improvement Plan that contractor shall use to monitor and evaluate its internal program effectiveness.

**D. Evaluation Factor: Personnel****0-15 Points**

- ☐ Proposed staff meets the requirements outlined in "staff requirements." Resumes included with education, background, recent experience and specific accomplishments.
- ☐ Contingent Hire letter provided for proposed duties of professional personnel, consultants and key subcontractor personnel, if applicable, along with hours allocated to the contract.
- ☐ The labor mix demonstrates the expertise and qualifications to successfully accomplish the requirements outlined in Section C.
- ☐ Possesses the organizational resources, capability and experience to provide initial workforce and replacements, if necessary, for an effort of this scope.

**E. Evaluation Factor: Past Performance****0-20 Points**

- ☐ The Contractors past performance for Government contract, grants or subcontracts for the same or similar services within the last three (3) years.

**F. Evaluation Factor: Cost****0-10 Points**

- ☐ A cost realism analysis using the price breakdown information submitted by the Offeror will be conducted. Cost realism is defined as the offeror's ability to project costs which are realistic for the work to be performed, indicates that the offeror understands the nature and extent of the work to be performed, and is consistent with the various elements of the offeror's technical proposal.

**G. Evaluation Factor: Target Population****0-15 Points**

- ☐ Understanding and working knowledge of the ethnic minority population and years of experience providing services.
- ☐ Possesses the organizational resources, capability and experience to provide initial workforce and replacement, if necessary, for an effort of this scope.

Amendment 5, issued on April 8, 1999, revised Paragraph M.4.-- Award Criteria to read

as follows:

Only those offers which are in the competitive range shall be considered for a contract award. While the lowest price or lowest total cost to the government may be an important or even a deciding factor in most source selections, the government may select the source whose proposal offers the greatest value to the government in terms of technical merit and other factors.

(*Id.*)

Despite soliciting over 100 prospective offerors, only Andromeda and Anchor submitted technical and cost proposals by the closing date of April 15, 1999, (AR Exh. 3, 4, and 7). Andromeda proposed a cost of \$512,825 for the base year and Anchor proposed a cost of \$456,554 for the base year. (AR Exh. 3 and 7). The District had estimated the cost at \$250,245. (AR Exh. 7).

On April 20, 1999, the Contracting Officer submitted the proposals to the Technical Evaluation Team ("TET") with a Technical Evaluation Plan which conformed to the Evaluation Factors contained in Amendment 4. (AR Exh. 5).

On April 27, 1999, the TET Chairperson submitted to the Contract Specialist a Technical Review Report containing the evaluations of each offeror, a narrative and technical analysis and individual review sheets. The average score for Anchor was 60.75 and the average score for Andromeda was 68. (AR Exh. 6). On May 17, 1999, the TET Chairperson submitted a Revised Technical Review Report which contains exactly the same narrative as the initial report.<sup>1</sup> In the May 17 report, the average score for Anchor was 66.25 and the average score for Andromeda was 74.75.

In the Technical Report, the TET noted that Anchor had limited experience in treating ethnic minorities and had no documented record of running substance abuse treatment programs. The Summary Analysis also states:

Offeror has the ability to provide services but need[s] to: 1) address issues of substance abuse treatment through their staff or linkages, 2) clarify role of subcontractor in the delivery of services, 3) revisit program location and review medical and administrative costs, especially those being charged to the subcontractor.

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<sup>1</sup>The Agency Report provides no information on how or why the TET rescored the proposals at this point.

(*Id.*)

The Summary Analysis for Andromeda provides:

Offeror is committed, has excellent therapeutic understanding of the population and requirement, but has deficit in program description and development and administrative management of the project. The following areas need to be addressed: 1) labor mix and responsibilities, 2) vocational programming, 3) after hours coverage, and 4) internal QI plan.

(*Id.*)

On May 27, 1999, the Contracting Officer noted in the Determination and Findings (“D&F”) for Competitive Range that Andromeda’s score of 74.75 was acceptable, and that Andromeda’s proposal “meets the requirement for the RFQ; however, it has only minor deficiencies which may be correctable.” (AR Exhibit 7). The Contracting Officer characterized Anchor’s score of 66.25 as “poor” and stated that its “proposal marginally meets the requirements of the RFQ.”<sup>2</sup> “It has deficiencies which may be correctable. A substantial revision is needed.” (*Id.*) The Contracting Officer found both offerors to be in the competitive range. (*Id.*)

Then on June 3 and June 7, 1999, the Contracting Officer held discussions with Anchor and Andromeda respectively to discuss the strengths and weaknesses of each proposal. (AR Exh. 8). The discussions with Anchor focused on costs, its limited experience with the target population and its lack of experience in treating substance abuse. In discussions with Andromeda, the Contracting Officer raised the agency’s concerns about excessive cost of meals, administrative assistants, psychiatric services and overhead. (*Id.*).

By letters dated June 10, 1999, the Contracting Officer requested that Anchor and Andromeda submit best and final offers (BAFOs) by June 14, 1999. (AR Exh. 9). Each offeror timely responded. (AR Exhibits 10, 11, 12). Anchor proposed a cost of \$342,888 for the base year and Andromeda proposed a cost of \$492,054 for the base year. (*Id.*)

The TET submitted its evaluation of the BAFOs to the Contracting Officer on June 18, 1999, awarding Andromeda an average score of 84 points, while awarding Anchor an average of 74.75 points. (AR Exh. 13). Anchor addressed the cost issues which the Contracting Officer had discussed, however, the lack of experience with the target population was still

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<sup>2</sup>The Contracting Officer’s reference to this solicitation as an RFQ (“Request for Quote”), rather than as an RFP (“request for Proposal”) is an insignificant mistake. (See AR Exhibit 1.)

considered a weakness. The TET's Summary Analysis of Anchor's BAFO states:

Offeror has the ability to provide services but will require leadership that is culturally sensitive and knowledgeable about the target population. The integration of approaches into a comprehensive program is felt to be lacking; however the potential is still there.

The TET's Summary Analysis of Andromeda's BAFO provides:

Offeror clarified and modified program offerings and is still technically strong, however price is still a concern.

(AR Exh. 13).

On July 20, 1999, the Contracting Officer held further discussions with Anchor and Andromeda relating only to cost issues. (AR Exh. 14). The summary of those negotiations indicates that the Contracting Officer discussed with Andromeda "the excessive cost in the proposal." (AR Exh. 14). Anchor and Andromeda submitted second cost BAFOs on July 26, 1999. (AR Exh. 15 and 16). Anchor proposed a base year cost of \$350,141<sup>3</sup> and Andromeda proposed a base year cost of \$421,821. (*Id.*)

On July 29, 1999, the Contracting Officer selected Anchor as the awardee, and executed the contract with Anchor on July 30, 1999. In the Source Selection Decision, the Contracting Officer stated:

Both Andromeda and Anchor have acceptable technical proposal, but the greater cost associated with Andromeda is a critical negative factor of Andromeda's proposal. . . Cost is acutely critical in view of the current status of the Community Service Administration's CYA FY 2000 budget. The CYA is facing a strong budget deficit of several millions of dollar.

In his Source Selection Decision, the Contracting Officer referenced Section M of the RFP and 27 DCRM § 1617.6 , both of which state:

While the lowest price or lowest total cost to the District may be an important or even a deciding factor in most source selections, the District may select the

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<sup>3</sup>The slight increase in Anchor's price was explained in detail in its Second BAFO. It resulted from a number of increases and decreases to salaries and wages, rent adjustments and client expense costs. (AR Exh. 15).

source whose proposal offers the greatest value to the District in terms of technical merit and other factors.

Although considered technically superior, the Contracting Officer did not select Andromeda's proposal. Instead the Contracting Officer selected Anchor's technically acceptable, but substantially less expensive proposal. The government's estimate of \$250,244 was greatly exceeded by both contractors. Anchor's proposal was \$99,897 higher than the government's estimate. Andromeda's proposal was \$71,680 higher than Anchor's, and \$171,577 higher than the government's estimate. The Contracting Officer found the difference in price between the two proposals, given the anticipated budget shortfall, the deciding factor.

Andromeda filed its protest on August 23, 1999, contending that Anchor "does not have any experience with Latinos, much less with the severely-ill, dually-diagnosed individuals." Andromeda also alleges that the award of the contract to Anchor is not in conformance with the State Mental Health Plan. Further, Andromeda charges that the CMHS had withdrawn a contract from Anchor for the provision of Mobile Mental Health Services. The Protester questioned why the CMHS had withdrawn the contract and on the other hand award them another contract.

On September 10, 1999, the Contracting Officer executed a "Determination and Findings for Contractor Responsibility and Supplement to Source Selection Decision Dated July 29, 1999". In the D&F for Contractor Responsibility, the Contracting Officer found that:

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- h. [Anchor] meets all qualifications and eligibility criteria to receive an award under the applicable laws and regulations.
- i. The Psychosocial Day Treatment Program will be an intrinsic part of the health care delivery system in the Hispanic community.
- j. The Psychosocial Day Treatment Program will be staffed with persons who have experience working with the Hispanic community.
- k. Anchor has experience in providing psychosocial rehabilitation, case management and psychiatric care and medication management services to the Hispanic community.

The Contracting Officer attached several letters of recommendation to the D&F endorsing Anchor and verifying that Anchor had provided psychosocial and vocational services to seriously mentally ill adults for over forty years.

(AR Exh. 20).

In a letter dated September 10, 1999, the CMHS Director of the Clinical Monitoring and Evaluation Division, Esther Dickerson, disputed Andromeda's claim that the FY 1999 or 2000 State Mental Health Plan mandates that community-based organizations in the Hispanic community are to be an intrinsic part of the health care delivery system. Attached to the letter are Minutes from a 1992 meeting of the State Mental Health Planning Council which contained the language that Andromeda cited in its protest. Ms. Dickerson asserted that the language which was adopted in 1992 is no longer in the State Health Plan. The letter also explained that CMHS had not terminated Anchor's contract for Mobile Services. According to Ms. Dickerson, the contract expired while CMHS was developing a new Homeless Services Plan. Anchor was not the successful offeror for the new solicitation. (AR Exhibit 21).

Andromeda responded on October 1, 1999, arguing that the State Mental Health Plan was included or should have been included in the FY 1999 and 2000 Plans.

## ANALYSIS

### I. *Anchor's Experience.*

Andromeda alleges that Anchor lacks experience in treating Latinos and dually - diagnosed mentally ill persons which should have disqualified it from award. Andromeda's protest presumes that the solicitation contains a definitive or special standard of responsibility which restricted award to contractors possessing a specific experience level with Latinos and dually-diagnosed mentally ill persons. Andromeda's protest challenges CMHS evaluation of Anchor's proposal and its responsibility determination.

"It is well settled that the Board will not overturn an affirmative responsibility determination unless a protester shows fraud or bad faith on the part of the contracting officials, a bidder's failure to adhere to [special or] definitive responsibility criteria, or that such a determination lacked a reasonable basis. . . . When a solicitation contains definitive responsibility criteria, which are specific and objective standards established by an agency to measure a bidder's ability to perform a particular contract, the agency must obtain evidence that the bidder meets those standards." *Central Armature/Fort Myer Joint Venture*, CAB No. 478, 44 D.C.Reg. 6823, 6828 (June 6, 1997). Special standards of responsibility go beyond general standards of responsibility in which a contractor must demonstrate its overall capability to perform the contract requirements. This solicitation includes many special standards of responsibility in the area of staffing. However, the solicitation does not require a specific amount of experience in treating Latinos. With respect to the dually-diagnosed mentally ill, the solicitation requires a specific number of years experience for the Program Director.



The RFP provides in the “General Requirements that Applies to Specific Services to be Performed” (§ C.3): “The target population will consist of forty (40) dually diagnosed ethnic minority adults. . . . It is anticipated that the majority of the population will be Spanish[-speaking].” This is the only direct reference to Latinos in the solicitation. Further, the solicitation clearly anticipates that ethnic minorities other than Latinos would be treated. Other sub-sections of the solicitation refers to treatment of “ethnic minority consumers.” (See e.g. §§ C.1, C.4.1, C.4.1, C.4.2, C14.2.1). Section C.6.1.3 provides: “All direct service staff shall have. . . education, background and experience in working with the mentally ill and substance abuse population.” This section refers generally to experience working with the dually diagnosed population, but does not specify an objective level of experience.

Aside from the general requirements regarding treatment of ethnic and multicultural minorities, and dually-diagnosed clients, the RFP also contains several purely objective specifications related to staffing, which qualify as special standards of responsibility. Section C.6.1. requires the staff to be proficient in English and Spanish. Section C.6.1.3 requires all professional staff to show evidence of licensure or evidence of having applied and paid the required fee for a current District license. Section C.6.1.4 requires the Program Director to possess at least a Master’s Degree in one of several specific fields, have the appropriate District license and a minimum of “two years experience in working with seriously and persistently mentally ill substance abusing and culturally diverse adults.” Section C.6.1.5 requires all mental health counselor/case managers to hold at least a Bachelor’s Degree in one of several specific fields from an accredited college. Section C.6.1.6.1 requires the Psychiatrist to have a minimum of two years experience providing psychiatric services to a “Multi-Cultural population,” be Board eligible in Psychiatry and licensed to practice medicine in the District of Columbia.” Section C.6.7.1 requires the recreational/activity therapist or counselor to hold a bachelor’s degree or higher in Recreational Therapy, have two years of experience working with the mentally ill and show proof of current certification by the National Council For Therapeutic Certification and registration by the D.C. Department of Consumer and Regulatory Affairs.

The Evaluation Criteria of Paragraph M.5 reflect the general and special standards of responsibility embodied in the solicitation specifications. The Evaluation Factor A, entitled “Technical Understanding of the Requirement and Approach,” required contractors to demonstrate their general capability to perform. For instance, a contractor was required to demonstrate a clear understanding of the work to be performed; describe how to accommodate cultural and gender specific issues of the consumers; and demonstrate understanding and working knowledge of culturally-diverse, dually-diagnosed mentally ill and substance abusing adults. On the other hand, the Evaluation Factor on Personnel requires that the [p]roposed staff meet the requirements outlined in ‘staff requirements.’ As we established above, the contractors were required to meet special standards of responsibility for staffing.

Our review of Anchor's Technical Proposal reveals that the CMHS's evaluation was adequately supported by documentation and in compliance with the evaluation criteria stated in the solicitation. (See *Biochemical Genetics-Newborn Screening Laboratory of Howard University Hospital*, CAB No. P-470, 44 D.C. Reg. 6795, 6800 (Feb. 25, 1997)). With respect to the special standards of responsibility, Anchor's proposal met all of the specific educational, experience, language, and licensing requirements which were set forth in the solicitation. We note that Anchor's Technical BAFO replaced the Program Director from its initial proposal, whose qualifications did not match those set forth in the solicitation, with a person who had 12 years of experience with the exact population served by this contract. (AR Exh. 10).

## *II. Compliance with The State Mental Health Plan*

Andromeda contends that the contract award to Anchor does not conform to the State Mental Health Plan based on the following statement:

The community based organizations (C.B.O.'s) should be included in the planning and delivery of service as an intrinsic part of the City network and apprised and allowed to compete fully for contracts, grants or other means of providing services, and should be given consideration in view of special needs.

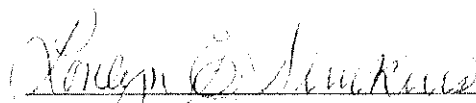
The District asserts that this statement is not contained in the FY 1999 or 2000 State Mental Health Plan.(AR Exh. 21). Even assuming that the statement is a part of the current State Mental Health Plan, or that the State Mental Health Plan could in anyway control the award of this contract, we find that statement does not conflict with the award of this contract to Anchor. In relevant part, the statement provides that community based organizations should be "apprised and allowed to compete fully for contracts . . . and should be given consideration in view of special needs." The record is clear that Andromeda was timely informed of the solicitation, allowed to compete and its proposal given all due consideration in a fair procurement process. In fact the Contracting Officer found Andromeda's technical proposal to be superior to Anchor's, while Anchor's less expensive proposal was judged as technically acceptable. In reviewing challenges to an agency's evaluation of proposal, the Board does not substitute its judgment for that of the agency, if the process has been fair, reasonable and performed in good faith.

We note that Andromeda was repeatedly informed during discussions with the Contracting Officer that the CMHS was concerned about excessive costs in its proposal. Ultimately, Andromeda's inability to trim costs sufficiently caused it to lose the award of this contract. We conclude that the evaluation of the proposals and the award of the contract to Anchor was fair and reasonable. Finally, we conclude that the award to Anchor did not violate the language which Andromeda claims is in the State Mental Health Plan. Accordingly, we

deny Andromeda's protest with prejudice.

SO ORDERED.

DATE: November 1, 1999



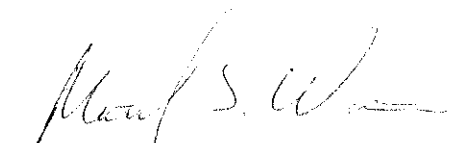
LORILYN E. SIMKINS

Chief Administrative Judge



PHYLLIS W. JACKSON

Administrative Judge



MATTHEW S. WATSON

Administrative Judge