

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeals of BRUCE D. ROYSTER )  
 )  
Under Dept. of Health & Mental Hygiene RFP for ) Docket Nos. MSBCA 1968 & 1969  
Medical Records Reviews of Ambulatory )  
Surgery & Hospital Inpatient Case Mix Data )  
 )

October 9, 1996

Bid Protest - Timeliness - Protest based upon alleged improprieties which are apparent before the closing date for receipt of proposals are untimely unless filed before the closing date for receipt of proposals and the Board lacks jurisdiction to consider allegations of impropriety on appeal.

Negotiated Contracts - Evaluation of Proposals - Procurement officials employ a reasonable degree of discretion in evaluating proposals. However, proposals may only be evaluated on the basis of the information that is provided by the offeror in its proposal. Where the offeror does not provide information requested by the RFP the evaluation may reflect such absence and a proposal may be rejected as not being reasonably susceptible of being selected for award.

APPEARANCE FOR APPELLANT: Bruce D. Royster  
Baltimore, MD

APPEARANCE FOR RESPONDENT: Stanley Lustman  
Assistant Attorney General  
Baltimore, MD

OPINION BY CHAIRMAN HARRISON

Appellant, a sole proprietor, timely appeals the denial of his bid protest concerning the determinations of the Department of Health & Mental Hygiene (DHMH) Procurement Officer that Appellant's technical proposals for the captioned Request for Proposals (RFP) were not reasonably susceptible of being selected for an award.

Findings of Fact

1. On January 17, 1996, the Health Services Cost Review Commission (HSCRC) of the DHMH issued two RFP's seeking offerors interested in providing auditing services of hospital in-

patient discharge casemix data and ambulatory surgery data for the HSCRC. Final proposals for the ambulatory surgery and inpatient casemix data were due on March 4, 1996 and March 11, 1996 respectively.

2. Pre-proposal conferences were held on February 15, 1996 (Ambulatory Surgery RFP) and February 22, 1996 (Hospital Inpatient Casemix Data RFP), which Appellant did not attend. Appellant did not protest the criteria for evaluating proposals prior to the due date for receipt of proposals.

3. On March 4, 1996, four vendors submitted proposals in response to the Ambulatory Surgery Data solicitation. These vendors were: 1) Appellant; 2) Aspens Systems Corporation (Aspens); 3) Delmarva Foundation for Medical Care, Inc. (Delmarva); and 4) LWN Enterprises. On March 11, 1996, three vendors submitted proposals in response to the Hospital Inpatient Discharge Casemix Data solicitation. These vendors were: 1) Appellant, 2) Aspens and 3) Delmarva.

4. An evaluation committee was established to review both proposals. This committee was composed of five individuals with extensive experience in the coding of hospital clinical information contained in medical records. These individuals represented both the private and public sectors and are experts in the fields of health information management and data analysis.

5. On March 28, 1996 the evaluation committee met to consider the proposals for both RFPs. Of the four vendors who submitted proposals for the Ambulatory Surgery Data RFP, only two, Aspens and Delmarva, were deemed reasonably susceptible of being selected for award and, therefore, their financial bids were opened.

6. Of the three vendors who submitted proposals for the Hospital Inpatient Discharge Casemix Data RFP, again only Aspens and Delmarva were deemed reasonably susceptible of being selected for award, and their financial bids were opened.

7. On May 14, 1996 the DHMH Procurement Officer, informed Appellant that his technical proposals for both RFP's were not acceptable and, therefore, his financial proposals were returned unopened.

8. On May 24, 1996 Appellant filed a timely protest with the DHMH Procurement Officer.

9. On July 9, 1996, the DHMH Procurement Officer denied each protest and Appellant appealed.

10. The Notice of Appeal, docketed as MSBCA 1968 and 1969, was filed with the Board on August 6, 1996. Appellant, while commenting on the Agency Report, withdrew his request for a hearing. The Respondent did not request a hearing. The appeal is thus decided on the written record.

### Decision

The RFP's which are the subject of this appeal seek vendors experienced in health information management and data analysis to audit hospital ambulatory surgery data and hospital inpatient discharge casemix data submitted to the HSCRC by Maryland hospitals. Because the source of the hospital casemix data is the medical record and the focus of the audits is on the clinical information contained in the hospital's medical records, the RFPs required documented expertise and relevant knowledge of Current Procedural Terminology (CPT) coding, International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM) coding, and Diagnosis Related Group (DRG) assignment for inpatient (and outpatient) services.

The RFPs describe for potential offerors the criteria that provided the basis for evaluation of the technical proposals. The technical evaluation factors and their order of importance are broken down into four overall categories: 1) Understanding the Problem; 2) Contractor Qualifications; 3) Technical Approach; and 4) Personnel Qualifications. These criteria are listed in ascending order of importance (i.e., criterion 1 is less important than criterion 2, etc.). The RFPs also established sub-criteria for finding an offeror's proposal susceptible of award, which are summarized in the Agency Report as follows:

1) Understanding the Problem:

- HSCRC Use of Inpatient Discharge/Ambulatory Surgery Data
- Project Purpose
- Scope of Project
- ICD-9-CM Coding/CPT Coding issues

2) Contractor Qualifications:

- Documented Relevant/Recent Experience
- Demonstrated Ability to Complete All Project Tasks

- High Quality References
- 3) Technical Approach:
- Technically Sound
  - Appropriate Analytic Methods/Sampling Techniques
  - Realistic Schedule of Completion
  - Appropriate Level of Project Management
- 4) Personnel Qualifications:
- Documented Knowledge and Training
  - Relevant/Recent Working for Contractor on Similar Project
  - Senior Staff Knowledge and Experience

See RFPs at pages 16-17.

The RFPs further direct at page 3:

6. Qualified offerors include only those responsible offerors who submitted technical proposals that are reasonably susceptible of being selected for award....
7. Offerors whose technical proposals are unacceptable (unqualified offerors) shall be so notified and their financial proposals shall be returned unopened.

Thus, an offeror whose technical proposal did not meet the minimum qualifications necessary to perform the contract was deemed not qualified to have its financial proposal considered and its financial proposal was returned unopened.

Appellant protested the determination that his technical proposals for both RFPs were “not reasonably susceptible of being selected for an award” in relevant part as follows:

This letter is to protest the determination “not reasonably susceptible of being selected for an award” noted in your correspondence of May 14, 1996.

The basis for the above is the Firm has in excess of twenty years of experience managing and conducting performance audits for Federal, State, County and City government agencies. Also, due to the nature of the assignment, the specialist committed to the project

is certified and licensed, experienced and has a good reputation and high standing in the view of its' peers.

The DHMH Procurement Officer responded to the protest concerning rejection of Appellant's technical proposals in relevant part as follows:

**A. Hospital Inpatient Case Mix**

1. Neither the project manager (i.e., the specialist referred to in your Proposal) nor other staff has the relevant experience in ICD-9-CM coding and DRG assignment that is necessary to perform the work.
2. Neither the project manager nor technical staff has relevant experience in DRG validation, which is critical to the inpatient data review process.
3. Based on your firm's prior experience, the committee did not believe your firm could meet the time frames required by the RFP.
4. The proposal failed to include a discussion of any quality control activities to ensure the accuracy and integrity of the work performed.
5. The proposal failed to discuss how the confidentiality of the data would be protected.
6. There was no discussion of the type of analysis to be performed on the data collected.

Your proposal indicates that St. Paul Computer Center, Inc. will be involved in the project; however, there is no discussion regarding the services to be provided by the St. Paul Center.

**B. Ambulatory Surgery**

1. The proposal made no reference to CPT coding at all.

It was indicated in the proposal that a validation of DRG assignment would be performed. DRG assignment has no relevance to this project.

There was no understanding in the Proposal of the difference in the data collected by the Commission for individuals receiving services on an outpatient basis.

2. Neither the project manager (e.g., the specialist referred to in your Proposal) nor other staff has the relevant experience in CPT coding that is necessary to perform the work required by this contract.
3. Neither the project manager nor the technical staff had relevant experience in CPT validating which is critical to the inpatient data review process.

4. Based on your firm's prior experience, the committee did not believe your firm could meet the time frames required by the RFP.
5. The proposal failed to include a discussion of any quality control activities to ensure the accuracy and integrity of the work performed.
6. The proposal failed to discuss how the confidentiality of the data would be protected.
7. There was no discussion of the type of analysis to be performed on the data collected.

Your proposal indicates that St. Paul Computer Center, Inc. will be involved in the project, however, there is no discussion regarding the services to be provided by the St. Paul Center.

Appellant's comments on the Agency Report consisted of the following:

After reviewing the Agency Report with the Health consultant selected for this project, this letter represents my response.

It appears that the majority of the items in the part V Argument [in the Agency Report] result from the **lack of specific proposal detail** that we deemed not relevant based on prior experience to successfully complete this type audit. As an example, since the number of records to be reviewed and their identity have already been determined, the need for discussion of how to identify the cases and sampling techniques to determine sample size is not pertinent. It is also believed that the other mentioned items, i.e. analytical ability, quality control and deliverables (plans, audit data, reports and files) result from the proposal's general discussion. The team of Accredited Record Technicians (ART) and Certified Coding Specialist (CCS) assembled for this project possess the expertise and experience to handle this engagement.

Regarding timely project completion and the staff pool available to be used, the team medical record professionals complete a minimum of four (4) records per hour and will be working 10 hour days for this phase. With this amount of production all time scheduled deadlines will be met with ease. Also, the four (4) people reflected in the proposal represent senior level team members and not all the ART's and CCS's committed to the project.

In closing, the capability to deliver the quality service to complete this project is present and the best value for the services required under this procurement is reflected in the associated cost proposal.

Appellant's comments reflect that its proposal was lacking in specific detail because Appellant did not consider a detailed response to certain aspects of the RFP relevant.<sup>1</sup> However,

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<sup>1</sup> Appellant filed no protest concerning any provision of the RFP's prior to the due date for receipt of proposals as required by COMAR 21.10.02.03A. Accordingly, the Board lacks jurisdiction to consider whether the

procurement officials who enjoy a reasonable degree of discretion in evaluating proposals, may only evaluate a proposal based on the information it provides. If the proposal fails to provide requested information, or is lacking in specific detail the evaluators may find a proposal to be deficient. See Transit Casualty Company, MSBCA 1260, 2 MSBCA ¶119(1985) at p. 55, Baltimore Industrial Medical Center, Inc., MSBCA 1815, 4 MSBCA ¶368(1994). Thus Appellant has not shown, based on this record, that the evaluation of his proposal was arbitrary. See also Kennedy Personnel Services, MSBCA 1795, 4 MSBCA ¶365 (1994); Macke Building Services, MSBCA 1283, 2 MSBCA ¶132(1968). [Even an incumbent may not assume that an evaluator will know the details of the incumbent's past performance or experience].

Additionally, we note that Appellant bears the burden to show that his proposals were not fairly evaluated. Transit Casualty Company, *supra*.

Accepting at face value Appellant's assertions contained in his comments on the Agency Report, the Board still has before it a record which fails to demonstrate that the evaluation committee or Procurement Officer acted in arbitrary fashion in rejecting Appellant's proposals.

Appellant thus has not met his evidentiary burden to show that the determination of the evaluation committee and Procurement Officer that his technical proposals were not reasonably susceptible of being selected for an award was improper. Accordingly, the appeal must be denied.

Wherefore, it is Ordered this 9th day of October, 1996 that the appeal is denied.

Dated: October 9, 1996

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Robert B. Harrison III  
Chairman

I concur:

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Candida S. Steel  
Board Member

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Randolph B. Rosencrantz  
Board Member

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criteria might be improper. See Giant Food Stores, Inc. T/A Martin's Food Markets Nos. 36, 58 & 76, MSBCA 1764, 4 MSBCA ¶357(1994) at pp. 3-4.

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule 7-203 **Time for Filing Action.**

(a) **Generally.** - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) **Petition by Other Party.** - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

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I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 1968 & 1969, appeals of Bruce D. Royster under DHMH RFP for Medical Records Reviews of Ambulatory Surgery & Hospital Inpatient Case Mix Data.

Dated: October 9, 1996

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Mary F. Priscilla  
Recorder