

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Computer Aid, Inc.,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 553 C.D. 2011
	:	
Department of Public Welfare,	:	Argued: June 9, 2011
	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE BARRY F. FEUDALE, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY SENIOR JUDGE FEUDALE**

FILED: July 6, 2011

Computer Aid, Inc. (Petitioner) has filed a petition for review from a final order of the Department of Public Welfare (DPW), denying its protest filed under the Commonwealth Procurement Code, 62 Pa. C.S. §§101-4509. For the reasons that follow, we affirm.

Procedural Background

On December 30, 2010, Petitioner filed a protest with DPW in relation to Request for Proposals (RFP) No. 16-09 for Information Technology and Support and Services, Lot 7. That same day, DPW Division of Procurement notified DPW Bureau of Information Systems and Deloitte Consulting LLP (Deloitte), a potential offeror, of the protest and of their right to file a response to the protest. Responses were filed and additional documents were submitted.

Petitioner initially requested a hearing on its protest but the request was later withdrawn. On March 14, 2011, the Director of DPW's Bureau of Administrative Services (presiding officer) issued an opinion based on the information and arguments submitted by the parties, making relevant findings of fact and conclusions of law.

Factual Background

On June 21, 2010, the Department of General Services (DGS) issued RFP 16-09 in order to procure information technology support and services for DPW. (Presiding officer Finding of Fact No.1, hereinafter "Finding of Fact No. _"). RFP 16-09 represented a departure from the manner in which DPW procured information technology services in the past. (Finding of Fact No.2). One of the objectives of the RFP was to stimulate competition and broaden vendor participation. (Id.). The term of any contract resulting from the RFP is 5 years/60 months with three optional one-year renewals.

The RFP sought prospective offerors to submit proposals with respect to seven separate segments (Lots) within the RFP's scope of work. (Finding of Fact No. 3). Offerors were permitted to submit proposals for one or more Lots.¹ (Id.).

The segment at issue in this case is Lot 7. RFP 16-09 Lot 7 statement of work included a transition period for the selected offeror's orientation/knowledge acquisition of up to six months from the contract effective date. (Finding of Fact No. 4). During the orientation/knowledge acquisition, DPW would pay the selected offeror only for accepted deliverables. (Id.). DPW would not pay for

¹ An offeror was not permitted, however, to contract for services in both Lots 1-5 and Lot 7.

maintenance and modification/enhancement services until completion and acceptance of all orientation/knowledge acquisition deliverables. (Id.).

RFP 16-09 required Lot 7 offerors to price various deliverables including: project initiation, setup and planning, orientation/knowledge acquisition, turnover and central data repository. (Finding of Fact No. 5). In addition, offerors were to supply firm fixed pricing for two services: maintenance and modification/enhancements. (Id.).

In the initial cost submittal for RFP 16-09, DGS and DPW required offerors to provide a monthly rate for Lot 7 maintenance services and to multiply this rate by twelve months for a total fixed annual amount. (Finding of Fact No. 6). Offerors were also to propose annual growth percentages for subsequent contract years. (Id.).

For year 1, DGS and DPW required that offerors provide a full one year of pricing for maintenance and modification/enhancement services in the RFP cost submittal, even though the selected offeror would not be paid or responsible for these activities during the transition phase (also known as orientation/knowledge acquisition). (Finding of Fact No. 8).

As permitted by Section 513(f) of the Code, 62 Pa. C.S. §513(f), DPW requested that both Petitioner and Deloitte submit, inter alia, best and final offer (BAFO) cost submittals. (Finding of Fact No. 10). In addition to pricing deliverables and audit tasks, Petitioner and Deloitte proposed a monthly rate for maintenance services and multiplied this rate by twelve months for a total fixed annual amount as well as annual growth percentages. (Finding of Fact No. 11). For modifications/enhancements, Petitioner and Deloitte each specified an all-inclusive blended hourly rate and multiplied this rate by 320,000 hours for a total

annual amount. They also proposed annual growth factors for modification/enhancement services. (Id.).

In order to determine the BAFO price for maintenance services for the subsequent years, the issuing officer inflated each offeror's proposed maintenance pricing by the offeror's proposed growth percentage for the second twelve-month period. (Finding of Fact No. 12). The issuing officer then inflated the resulting totals for each subsequent twelve-month period using each offeror's proposed growth factor for the applicable period. (Id.). The issuing officer added the amounts for each twelve month period, resulting in pricing for a sixty-month period of maintenance services. (Id.). The issuing officer followed the same process and determined pricing for sixty months of modifications/enhancements. (Id.). Finally, if proposed, the issuing officer added the pricing for audits and deliverables, including the orientation/knowledge acquisition period, to the sixty months of pricing for maintenance and modification/enhancement services to determine the total for the BAFO cost submittal. (Id.).

The issuing officer requested, and Deloitte verified, the calculation of Deloitte's total BAFO cost submittal was \$268,623,674.30. (Finding of Fact No. 13). The issuing officer calculated Petitioner's total BAFO cost submittal to be \$283,303,469.47. (Finding of Fact No. 14). The issuing officer requested that Petitioner address the discrepancy between the total contract price of \$255,677,172.62 contained in Petitioner's BAFO disadvantaged business submittal with her calculation of Petitioner's total BAFO cost submittal, i.e., \$283,303,469.47 v. \$255,677,172.62. (Finding of Fact No. 14).

In a letter dated November 2, 2010 to the issuing officer, Petitioner stated that the difference in pricing between its BAFO cost submittal and its BAFO

disadvantaged business submittal was the fact that it had not included the first six months of pricing for maintenance services and modification/enhancement in the total contract price for its BAFO disadvantaged business submittal because it would not be providing maintenance and modification services for the first six months under the terms of the actual contract.² (Finding of Fact No. 15). Thus, Petitioner's BAFO cost submittal of \$283,303,469.47 included Petitioner's proposed pricing for the Lot 7 deliverables, including six months of orientation/knowledge acquisition services, audit costs, sixty months of maintenance services and sixty months of modifications/enhancements. (Finding of Fact No. 16). Deloitte's BAFO cost submittal of \$268,623,674.30 included Deloitte's proposed pricing for these same components of RFP 16-09. (Id.) Meanwhile, the total contract cost of \$255,677,172.62 contained in Petitioner's BAFO disadvantaged business submittal was based on the pricing for Lot 7 deliverables, including six months of orientation/knowledge acquisition services,

² The letter states in part:

In order to commit to the [disadvantaged business] spending levels we have proposed, we performed an analysis of the actual contract costs over the full 5-year term of the contract. The difference between our proposed total contract price and the amount you have calculated is largely the result of the way we proposed and priced the activities that occur during the Orientation and Knowledge Transfer (OKA) phase of the project and the actual commencement of Maintenance and Modification work.

Maintenance and Modification work will only begin once the OKA activities have been completed, and [Petitioner] has demonstrated the capability to take responsibility for the associated systems and modification work orders. As a result, the majority of the maintenance and modification costs will not be incurred until the second half of the first contract year.

(R.R. at 233a).

audit costs and pricing for 54 months of maintenance services and 54 months of modifications/enhancements. (Finding of Fact No. 17).

After the BAFO submittals were delivered, DGS conducted pre-selection negotiations with Petitioner and Deloitte. (Finding of Fact No. 18). These negotiations were instituted, in part, to clarify the actual contract pricing for the deliverables and the firm fixed pricing for year 1 of the contract. (Id.).

As result of the pre-selection negotiation, Petitioner reduced its contract pricing to \$246,812,930.07. (Finding of Fact No. 19). This pricing included pricing for the deliverables including six months of orientation/knowledge acquisition services, audit costs and pricing for 54 months of maintenance services and 54 months of modifications/enhancements over the actual 5-year contract term. (Finding of Fact No. 20). By comparison, Deloitte's original pre-selection negotiation pricing included pricing for deliverables, including six months of orientation/knowledge acquisition services, audit costs, pricing for 54 months of maintenance services and pricing for sixty months of modifications/enhancement services. (Finding of Fact No. 21).

At the request of the issuing officer, Deloitte removed pricing for 6 months of modification/enhancements during the first year of the contract so that Deloitte's pre-selection pricing of \$243,414,979.04 included pricing for deliverables, including six months of orientation/knowledge acquisition, audit costs and pricing for 54 months of maintenance and modification/enhancements. (Finding of Fact No. 22).

Thus, Petitioner's pre-selection pricing of \$246,812,930.07 included pricing for Lot 7 deliverables including six months of orientation/knowledge acquisition services, audit costs, 54 months of maintenance services and 54 months of

modifications/enhancement services while Deloitte's revised pre-selection pricing of \$243,414,979.04 included pricing for the same services. (Finding of Fact No. 23) .

By letter dated December 20, 2010, Petitioner was advised that Deloitte had been selected for final contract negotiations by the evaluation committee. Petitioner proceeded to file a bid protest.

In its protest, Petitioner argued that DGS misunderstood both Petitioner's cost submittal as well as the requirements of the underlying RFP. Based on this error, DGS improperly requested that Deloitte submit the revised cost proposal discussed above. This revised cost proposal only aggregated 54 months of Deloitte's costs despite the fact that Deloitte will be charging, and DPW will be incurring, costs for the entire 60-month term consistent with Deloitte's technical submittal. In turn, Petitioner argued this error allowed Deloitte to materially reduce its total proposed costs for Lot 7 by approximately 10%, which significantly improved Deloitte's cost submittal score when compared with Petitioner's 60-month cost submittal. Petitioner asserted that the "unwarranted" 54-month cost submittal changed the standard for evaluation under the RFP and resulted in Deloitte's selection for contract negotiations.

In this regard, Petitioner asserted that DGS' error relates to the incursion of costs associated with the transition activities, i.e., those activities that will take place between the effective date of the contract and the offeror's start date. Stated another way, transition activities are those that will be incurred as the old vendor transitions to the new vendor. Petitioner maintained that because Deloitte is the old vendor, it would not be required to incur costs for transition activities.

Petitioner argued that as the non-incumbent offeror, it absorbed costs for transition activities in its total cost proposal, including Petitioner's BAFO and pre-selection cost proposals. These costs were allocated in the pricing structure over the entire 60-month term of the contract. Petitioner did not include a separate charge for transition activities alone. Under its proposal, the cost for transition activities was \$0. Instead, Petitioner's proposal reflected costs for operation activities, with a monthly allocation for transition activities over 60 months.

Petitioner posited that Deloitte's initial technical submittal, and related cost submittal, also reflected costs for monthly operational activities for 60 months. However, as the incumbent, Deloitte did not need to charge for transitional activities. Also, Petitioner notes, Deloitte's BAFO cost proposal reflected costs for 60 months.

On March 14, 2011, DPW issued a final determination on the bid protest. In its determination, DPW discussed the pre-selection pricing issue as follows:

The difference between Deloitte's initial pre-selection pricing and its revised pre-selection pricing is that the initial submission included pricing for a full year of Modifications services (320,000 hours) during contract year 1. ... Accordingly, Deloitte's initial pre-selection pricing reflects sixty months of pricing for modification services while [Petitioner's] pricing reflects fifty-four months. In order to make the apple to apple comparison advocated by [Petitioner], the Issuing Officer needed to have six months of modification pricing removed from the initial Deloitte pre-selection pricing.

Further, there was no need to provide this same opportunity to [Petitioner] since its pre-selection pricing for maintenance and modification activities was already based on fifty-four months of services. I cannot find that [Petitioner's] argument it would be providing Maintenance and Modifications services over the sixty

month contract term credible. [sic] ... Prior to filing its protest, [Petitioner's] understanding of its responsibility was set forth in its November 2, 2010 Letter to the Issuing Officer:

Maintenance and Modification work will only begin once the [Orientation/Knowledge Acquisition] has been completed and [Petitioner] has demonstrated the capability to take responsibility for the associated systems and modifications work orders. As a result, the majority of the maintenance and modification costs will not be incurred until the second half of the first contract year.

Consistent with this understanding, the spreadsheets included with the letter have costs for Maintenance and Modification activities over a fifty-four month period beginning in month seven of the contract. ...

Deloitte also has not been permitted to remove six months of services resulting in fifty-four months of pre-selection pricing being compared to [Petitioner's] sixty months of pricing. In addition to the fifty-four months of Maintenance and Modification services, Deloitte's pre-selection pricing included pricing for Orientation/Knowledge Acquisition deliverables. The fact that Deloitte, as did [Petitioner], chose not to charge DPW for any of the Orientation/Knowledge Acquisition deliverables does not mean that it will not be providing or incurring costs for these services under the awarded contract just as [Petitioner's] decision not to charge for certain deliverables does not mean that it would not have provided these deliverables. First, while recognizing that the nature of activities may differ, RFP 16-09 requires that Deloitte, even as an incumbent, provide Orientation/Knowledge Acquisition services. ... In addition, Deloitte has proposed transition activities, including activities over a six month period ... and has in fact allotted hours to transition activities as evidenced in its pre-selection submission. ...

Based on the information and documents presented, I find that the DGS and DPW did use a uniform standard in relation to the pricing submitted by [Petitioner] and Deloitte. Accordingly, I cannot find that DGS and DPW's evaluation was improper or contrary to law.

(Presiding officer opinion at pages 8-9)(emphasis supplied).

Petitioner then filed a petition for review with this Court.³

Arguments/Discussion

The requirements for competitive bidding exist “to guard against favoritism, improvidence, extravagance, fraud and corruption in the awarding of...contracts....” Yohe v. Lower Burrell, 418 Pa. 23, 28, 208 A.2d 847, 850 (1965). Here, Petitioner argues, DPW failed to satisfy the basic purpose of the Code by failing to treat the proposals of Petitioner and Deloitte fairly, equally and without the appearance of favoritism. Further, under Pennsylvania law, public contracts must be awarded pursuant to a competitive process, and proposals must be evaluated under a common standard. See American Totalisator Co. v. Seligman, 384 A.2d 242 (Pa. Cmwlth. 1978), affirmed, 489 Pa. 568, 414 A.2d 1037 (1980). It is well established that “the requirement in competitive bidding that there be fair and just competition and the absence of favoritism is violated whenever bidders are treated otherwise than by a common standard.” Id., at 258.

Petitioner argues that in this case, DPW failed to treat Petitioner and Deloitte fairly and equally during the bidding process when it improperly evaluated

³ The Code sets forth the scope and standard of review in an appeal from a determination denying a bid protest. 62 Pa. C.S. §1711.1(i) provides that a court shall hear the appeal, without a jury, on the record of determination certified by the purchasing agency. The court shall affirm the determination of the purchasing agency unless it finds from the record that the determination is arbitrary and capricious, is an abuse of discretion or is contrary to law.

Petitioner's pre-selection total 60-month cost submittal, reflecting a full 60 months of services against Deloitte's 60-month cost submittal that reflected only 54 months of services. By arbitrarily allowing Deloitte to subtract 6 months worth of costs to Petitioner's detriment, DPW improperly favored Deloitte.

Petitioner maintains that DPW's rationalization for its actions is premised on the mistaken assumption that Deloitte was providing a full 6 months worth of transition services and only 54 months of ongoing operational services. This is not the case. Because it is the incumbent, Deloitte was required to provide very limited transition services. While DPW points out that Deloitte's 60-month cost submittal evidenced that Deloitte was providing transition services, Petitioner emphasizes that the transition services were highly limited during month 1 through month 6. If corrected, meaning Deloitte's pre-selection 60-month cost submittal was changed to reflect 60 months of services, Deloitte's pre-selection 60-month cost submittal would be \$21,810,744.23 more than Petitioner's.

Petitioner argues that DPW's actions were arbitrary, capricious and an abuse of discretion in that DPW lacked any rational basis for its decision to direct Deloitte to subtract 6 months worth of costs for ongoing operational services from Deloitte's pre-selection 60-month cost submittal, particularly when DPW knew that it would work to Petitioner's disadvantage. Furthermore, Petitioner asserts that DPW's actions were an error of law in that DPW violated the Code's express requirement that a Commonwealth agency treat all responsive proposals fairly and equally. See 62 Pa. C.S. §513. In addition, Petitioner contends that DPW erred by failing to follow the express terms of the RFP. See American Totalisator (Commonwealth agencies are bound by the express terms of their request for proposals). Petitioner stresses that nothing in the RFP here signaled to the

competitive proposers or authorized the evaluation committee to engage in a comparison of less than a full 60-month cost proposal.

Section 513 of the Code addresses the solicitation and award of contracts through the request for proposal process. The Code does not provide a “rigid, detailed procedure or strict requirements for the RFP process,” but “preserves a great deal of agency discretion....” Stanton-Negley Drug Company v. Department of Public Welfare, 943 A.2d 377, 387 (Pa. Cmwlth. 2008), affirmed, 599 Pa. 597, 962 A.2d 670 (2009). In this regard, Section 513(g) of the Code, 62 Pa. C.S. §513(g) provides that the responsible offeror whose proposal is determined in writing to be the most advantageous to the purchasing agency, taking into consideration price and all evaluation factors, shall be selected for contract negotiation. Once this selection is made, Section 561 of the Code, 62 Pa. C.S. §561, provides that the determination is final and conclusive unless it is clearly erroneous, arbitrary, capricious or contrary to law. A bid protester has the burden of demonstrating that an agency abused its discretion. Stanton-Negley.

An abuse of discretion is defined as a misapplication of the law, a manifestly unreasonable exercise in judgment, or a final result that evidences partiality, prejudice, bias or ill-will. Allegheny County v. Golf Resort, Inc., 974 A.2d 1242 (Pa. Cmwlth. 2009). When there is no rational support in the record for a finding of fact, there has been a manifestly unreasonable error in judgment and, therefore, an abuse of discretion. Id. (citing Rosing, Inc. v. Pennsylvania Liquor Control Board, 690 A.2d 758, 760 (Pa. Cmwlth. 1997)).

Having reviewed the record in its entirety, we must conclude that it does not reflect partiality, prejudice, bias or ill-will in DPW’s actions. Contrary to Petitioner’s assertions, it is our conclusion that the steps DPW took throughout this

process evidence a desire to use a common standard in evaluating Petitioner's and Deloitte's submittals.

The record reflects that upon finalizing the review of the various BAFO submittals of Petitioner and Deloitte, the issuing officer noticed a discrepancy between the total contract price referenced in Petitioner's BAFO disadvantaged business submittal and the total contract price calculated for Petitioner's BAFO cost submittal. (R.R. at 202a-203a; 231a-232a). In order to confirm there was not a mistake in her calculation, the issuing officer requested that Petitioner and Deloitte confirm her calculation of their total BAFO cost submittal pricing. (Id.). The issuing officer also asked Petitioner to address the discrepancy between the total contract price in Petitioner's BAFO disadvantaged business submittal and issuing officer's calculation of Petitioner's total BAFO cost submittal. (Id.).

As the presiding officer noted, Petitioner's clarification letter reflected that the difference in pricing between its BAFO cost submittal and its BAFO disadvantaged business submittal was due to the fact that Petitioner had not included the first six months of pricing for maintenance and modification/enhancement services in the total contract price for its BAFO disadvantaged business submittal. (R.R. at 204-a-205a). The letter illustrated Petitioner's rationale for excluding the pricing for maintenance and modification/enhancement services was based on the fact that it would not be providing maintenance and modification/enhancement services during the orientation/knowledge acquisition phase of the resulting contract. (Id.).

The chart included with Petitioner's clarification letter reflected the logic in Petitioner's 60-month pricing. The chart indicates that for months 1 through 12, Petitioner proposed 6 months of pricing for maintenance and

modification/enhancement services in the amount of \$26,567,835.46. (R.R. at 234a-235a). This amount is nearly one-half of Petitioner's twelve-month BAFO cost submittal of \$53,231,236.04 for the same services. (R.R. at 222a). Thus, although Petitioner's BAFO cost submittal was comparable to Deloitte's BAFO cost submittal, the total pricing in Petitioner's BAFO disadvantaged business submittal was not. While the total price calculated for both Petitioner's and Deloitte's BAFO cost submittals reflected 60 months of pricing for maintenance and modification/enhancement services, the total contract price included in Petitioner's BAFO disadvantaged business submittal reflected only 54 months of maintenance and modification/enhancement services.

As DPW's brief notes, at this point the issuing officer faced a choice. She could have: (1) ignored Petitioner's BAFO disadvantaged business submittal and simply finalized her evaluation based on her calculation of the parties' BAFO cost submittals; (2) removed six months of Deloitte's year 1 maintenance and modification/enhancement pricing to align with the method used by Petitioner in its BAFO disadvantaged business submittal; or (3) entered into pre-selection negotiations with both entities. (DPW brief at pages 17-18). DPW chose the third option, in part, to clarify actual contract pricing. (R.R. at 241a-243a; 244a-246a).

The record indicates that Petitioner reduced its contract pricing to \$246,812,930.07 (R.R. at 206a). In this regard, Petitioner used 6 months to calculate its year 1 maintenance and modification/enhancement pricing. (R.R. at 208a, 210a and 249a-251a). The record also reflects that Deloitte's original pre-selection negotiation pricing included, *inter alia*, pricing for 54 months of maintenance services and sixty months of modifications/enhancements. (R.R. at 252a-256a).

Because the parties' proposals were not equal with regard to the pricing of modifications/enhancements, the issuing officer requested, and Deloitte removed, pricing for 6 months worth of modifications/enhancements during the first year of the contract. This, DPW asserts, resulted in the proposals being properly aligned for purposes of comparison (Deloitte's total proposed price was \$243,414,919.04 and Petitioner's was \$246,812,930.07).

By following the factual progression set forth above as it is reflected in the record, we are not left with the impression that the RFP process in this case was fraudulent, reflective of favoritism or that it constituted an error of law under the Code. We note that, to the extent Petitioner argues its pre-selection 60-month cost submittal reflected it would be providing 60 months of maintenance and modification/enhancement services, this assertion was soundly rejected by the presiding officer as not credible.⁴ We are bound by this credibility determination

⁴ Addressing this issue, the presiding officer stated:

The difference between Deloitte's initial pre-selection pricing and its revised pre-selection pricing is that the initial submission included pricing for a full year of Modifications services (320,000 hours) during contract year 1. ... Accordingly, Deloitte's initial pre-selection pricing reflects sixty months of pricing for modification services while [Petitioner's] pricing reflects fifty-four months. In order to make the apple to apple comparison advocated by [Petitioner], the Issuing Officer needed to have six months of modification pricing removed from the initial Deloitte pre-selection pricing.

Further, there was no need to provide this same opportunity to [Petitioner] since its pre-selection pricing for maintenance and modification activities was already based on fifty-four months of services. ***I cannot find that [Petitioner's] argument it would be providing Maintenance and Modifications services over the sixty month contract term credible.*** [sic] ... Prior to filing its protest,

on appeal. See Direnzo Coal Company v. Department of General Services, 825 A.2d 773 (Pa. Cmwlth 2003)(it is the hearing officer who must resolve evidentiary conflicts, and it is not the function of the reviewing court to judge the weight and credibility of the evidence).

Thus, while Petitioner takes much umbrage to DPW's ultimate decision to allow Deloitte to reduce 6 months worth of modifications/enhancements during the first year of the contract, our review of the record does not indicate anything other than an attempt by DPW to make an "apples-to-apples" comparison of the parties' pre-selection proposals. Because there is rational support in the record for the reduction of Deloitte's pre-selection proposal to 54 months of maintenance and modification/enhancement services, we conclude DPW did not abuse its discretion.

In its appeal, Petitioner also argues that Deloitte was given an advantage because it was the incumbent. We reject this contention as well. We agree with

[Petitioner's] understanding of its responsibility was set forth in its November 2, 2010 Letter to the Issuing Officer:

Maintenance and Modification work will only begin once the [Orientation/Knowledge Acquisition] has been completed and [Petitioner] has demonstrated the capability to take responsibility for the associated systems and modifications work orders. As a result, the majority of the maintenance and modification costs will not be incurred until the second half of the first contract year.

Consistent with this understanding, the spreadsheets included with the letter have costs for Maintenance and Modification activities over a fifty-four month period beginning in month seven of the contract.

(Presiding officer opinion at page 8)(emphasis supplied).

DPW's argument that while Deloitte, as the incumbent, may have to perform different transition activities, it is wrong to assume that Deloitte would not have significant responsibilities during the transitional services period.

At the very least, Deloitte would have to provide implementation services necessary for the new, multi-vendor approach which differs significantly from the current contract structure and requirements. R. 22a; 25a; 50a. For instance, as the selected Offeror for Technical Support, Deloitte would be required to implement new business processes to address its contract activities with the selected Offerors for Lots 1 through 5 as well as DPW. R. 20a; 32a; 50a. Additionally, the RFP required Deloitte to provide full Orientation/Knowledge Acquisition services for the Child Welfare component of Lot 7 work since the component was new to this engagement. R. 25a; 53a. As any other selected Offeror, Deloitte could not provide and would not be paid for Lot 7 Maintenance and Modification/Enhancement services until the completion and acceptance of all Orientation/Knowledge Acquisition deliverables.

(DPW brief at page 14).

For the reasons set forth above, we also conclude Petitioner's assertion that DPW improperly waived Deloitte's non-conformity with the RFP is also without merit. The record reflects that DPW was only required to find proposals non-responsive if they were not timely received or not properly signed by an offeror. R.R. at 16a. For all other non-conformities, DPW retained discretion to waive the non-conformity, to allow the offeror to remedy the non-conformity or to consider the non-conformity in the scoring of the proposal. Id. Thus, even if we were to agree a non-conformity existed, it does not mean the proposal was, as Petitioner argues, non-responsive.

Finally, Petitioner avers that DPW erred as a matter of law because it failed to select for contract negotiation the proposal that was most advantageous to the Commonwealth in violation of Section 513(g) of the Code. In light of our conclusions with regard to the other issues raised in this case, and based on our independent review of the record, we disagree. To the contrary, we believe the submittals were evaluated based on a common standard and, at the end of the day, Deloitte's final contract pricing was less than Petitioner's. Accordingly, there was no violation of the Section 513(g) of the Code.

The order of the DPW, denying Petitioner's protest, is hereby affirmed.

Barry F. Feudale, Senior Judge

Judge Leavitt and Judge Brobson did not participate in the decision in this case.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Computer Aid, Inc.,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 553 C.D. 2011
	:	
Department of Public Welfare,	:	
	:	
Respondent	:	

ORDER

NOW, this 6th day of July, 2011, the order of the Department of Public Welfare, denying the bid protest of Computer Aid, Inc., is hereby affirmed.

Barry F. Feudale, Senior Judge