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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Vocational Resources, Inc.

File: B-242396

Date: April 29, 1991

Zane K. Sullivan, Esq., and Colleen Ambrose, Esq., Sullivan & Tabaracci, for the protester.
Dario D'Angelo and Allen W. Smith, U.S. Department of Agriculture, Forest Service, for the agency.
Catherine M. Evans and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency decision to award contract for employee assistance program to higher-priced quoter was improper where record indicates that evaluation was inconsistent with terms of solicitation, and does not support agency's conclusion that awardee's proposal was superior to protester's.

DECISION

Vocational Resources, Inc. (VRI) protests the award of a contract to St. Patrick Hospital under request for quotations (RFQ) No. 0-846, issued by the Forest Service, Department of Agriculture, for an employee assistance program to service employees of several national forests and the Northern Region regional office in Montana. VRI alleges that the agency improperly evaluated its proposal and that award to St. Patrick at a higher price therefore was improper.

We sustain the protest.

The RFQ, issued as a small business-small purchase set-aside, provided that award would be based on evaluation of technical and cost proposals. The RFQ did not specify any particular technical evaluation criteria, but did require that technical proposals describe the qualifications of the project supervisor, the proposed technical approach, and the background of the firm. No information was requested regarding proposed counselors, but the statement of work required that the contractor provide counselors with a degree and vocational experience in the counseling or psychology fields. The RFQ also stated a preference for counselors licensed by the State

of Montana. In addition to regular counseling services, a separate line item in the RFQ required the contractor to conduct a Drug Free Workplace presentation, using a video and materials supplied by the agency.

The agency received proposals from VRI and St. Patrick, the incumbent contractor. Both quoters submitted personnel descriptions and resumes for their proposed counselors. VRI proposed four counselors, three of whom are Certified Employee Assistance Professionals (CEAP), and one of whom--the designated project supervisor--is also a Licensed Professional Counselor (LPC) in Montana. St. Patrick offered three counselors, all of whom are LPCs, as the hospital requires its counselors to be licensed by the state. Although VRI's price was about 8 percent lower than St. Patrick's, the agency determined that St. Patrick's counselors were generally better qualified and therefore worth the additional cost. The agency awarded the contract to St. Patrick on December 4, 1990. In a letter notifying VRI of the award, the agency stated that "the overall qualifications of the counselors available were not strong enough to warrant contract award to your firm." VRI challenges the agency's conclusion, arguing that its proposed counselors are at least as qualified as St. Patrick's.

As a preliminary matter, although this procurement was conducted under the small purchase procedures of part 13 of the Federal Acquisition Regulation (FAR), and therefore was not governed by normal competition procedures, all procurements, including small purchases, must be conducted consistent with the concern for a fair and equitable competition that is inherent in any procurement. Armour of Am., B-237690, Mar. 19, 1990, 90-1 CPD ¶ 304. In this connection, it is fundamental that an agency evaluate proposals in accordance with the terms of the solicitation. See Peter N.G. Schwartz Cos. Judiciary Square Ltd. Partnership, B-239007.3, Oct. 31, 1990, 90-2 CPD ¶ 353. In reviewing protests against allegedly improper evaluations, we will examine the record to determine whether the agency met this standard, and whether its judgment was reasonable and supported by the record. Id. For the reasons that follow, we find that the agency's technical evaluation was not in accordance with the terms of the RFQ, that the record does not support the agency's conclusions, and that the award therefore was improper.

As noted, the RFQ required that technical proposals address three areas: the proposed project supervisor, the proposed technical approach, and the firm's background; in addition, the RFQ required the contractor to provide qualified counselors. Thus, although not designated as evaluation factors, quoters could reasonably expect that their technical

proposals would be evaluated in these four areas. See Sterling Inst., B-223729, Oct. 3, 1986, 86-2 CPD ¶ 390.

The record indicates that the agency considered three factors in the technical evaluation: qualifications of counselors, technical approach, and firm background.^{1/} Thus, contrary to the terms of the RFQ, the agency did not evaluate either quoter's proposed project supervisor. The record shows that St. Patrick's proposal did not identify the required project supervisor, while VRI's did. However, St. Patrick's proposal was not downgraded for failing to address the requirement. Moreover, the evaluation appears to ignore the fact that VRI proposed a supervisor at all. In noting that VRI offered only one LPC, the agency expressed surprise that this individual--the proposed supervisor--was not offered as VRI's "primary counselor." The RFQ did not provide for designation of a primary counselor; however, St. Patrick designated one of its proposed counselors the "lead counselor." Thus, it appears that VRI's proposal was compared to St. Patrick's proposal in this regard instead of to the RFQ requirements. The agency's reference to a "primary counselor" does not appear to relate to the "project supervisor" requirement, since the agency questioned VRI's failure to designate its most qualified counselor as the primary counselor, even though this individual was in fact designated the project supervisor. We conclude that the agency's evaluation in this regard was inconsistent with the RFQ requirements.

The record also indicates that VRI's proposal was improperly evaluated under the technical approach requirement. This evaluation factor was comprised of three subfactors: confidentiality, reporting, and drug training. Both St. Patrick and VRI received the maximum score of five points under the first two subfactors. Under the drug training subfactor, however, St. Patrick received five points while VRI received only four points. As noted above, the required Drug Free Workplace presentation consists of a video and written materials provided by the agency. St. Patrick's proposal offered a choice between the required "canned" presentation and an alternative presentation delivered by an addiction specialist from the hospital's Addiction Treatment Program. According to the agency, VRI's score was reduced because, unlike St. Patrick, it did not offer an addiction specialist.

^{1/} The agency report on the protest does not contain a contemporaneous record of the evaluation. Instead, the record contains a memorandum from the agency's employee relations specialist and a cover letter from the contracting officer memorializing the results of a discussion between them regarding the relative merits of the two proposals.

This reduction was unwarranted. Although St. Patrick proposed its addiction specialist in connection with its alternative to the "canned" Drug Free Workplace presentation, its contract indicates that the award was based on the "canned" presentation described in the RFQ and not the proposed alternative. In other words, the services of the addiction specialist are not required under the terms of the contract. It follows that the fact that St. Patrick offered the services of an addiction specialist was not a proper basis for rating St. Patrick's proposal superior to VRI's.^{2/} To the extent that this aspect of the evaluation record may indicate the agency's consideration of the proposed counselors' experience in chemical dependency counseling (the record seems to indicate that the addiction specialist was considered only in connection with the drug presentation), the record shows that three of VRI's proposed counselors have specific experience in chemical dependency counseling. Nothing in the record indicates why St. Patrick's proposal of an addiction specialist warranted a higher rating than VRI's offer of experienced chemical dependency counselors.

The evaluation of the proposed counselors' qualifications also was flawed. St. Patrick received four out of five possible points under the counselor qualifications factor, while VRI received only three points. Noting that all of St. Patrick's counselors are LPCs, while VRI offered three CEAPs and only one LPC, the agency concluded that "a Certified Employee Assistance [Professional] does not reflect the qualitative assurance of a Licensed Professional Counselor." The agency asserts that LPCs are better qualified than CEAPs because the experience, testing and education requirements for LPC licensing exceed those for CEAP certification. This conclusion is not supported by the record.

First, as for actual experience, an LPC is required to have completed only 2,000 hours of work in any counseling field, while a CEAP must have completed 3 years and 3,000 hours of counseling, specifically in worksite-based employee assistance programs. Both professional designations require an examination, for which the candidate must be nominated by one or more supervisors.

Second, the agency asserts that a "major part of the [employee assistance program] is referral to other professionals," and that the LPC designation is preferable in this regard because

^{2/} Moreover, as the RFQ called for presentation of a program already prepared by the agency, it is not clear on what basis the agency could find qualitative differences between proposals under this subfactor, or why drug training was even a separate subfactor in the evaluation.

the LPC examination tests the quality of the candidate's counseling and professional referral skills, while the CEAP examination focuses on the relationship between the employee assistance program and the client organization. Again, the agency's position is not supported by the record. The record shows that the LPC examination in fact does not test a counselor's ability to make referrals to other professionals, while the CEAP exam does.^{3/} In addition, the CEAP/organizational interface is only one of several areas tested by the CEAP examination; the CEAP examination also addresses other areas unique to employee assistance programs such as identification of problems that affect job performance, as well as specific knowledge about psychological and chemical dependency problems. Thus, the agency's stated rationale for preferring the LPC designation is unsupported by fact.

Finally, and most significantly here, notwithstanding any alleged difference between the prerequisites for LPC licensing and CEAP certification, the record indicates that VRI's proposed counselors are as qualified to perform the contract as are St. Patrick's. The agency appears to place great weight on the fact that the LPC designation requires a master's degree while the CEAP does not. This distinction is irrelevant here, since all of VRI's proposed counselors have master's degrees in a counseling field. With regard to experience, the record shows that St. Patrick's three proposed counselors have between 5 and 15 years of counseling experience, with 3 to 6 years in employee assistance programs. The agency noted that one of St. Patrick's proposed counselors has a Ph.D. degree, but ignored the fact that this individual has the least experience--3 years--in employee assistance programs. VRI's four proposed counselors have between 9 and 14 years of counseling experience; three of the counselors have 3 to 4 years of experience in employee assistance while the fourth has been a vocational counselor for 12 years. In addition, as noted above, to the extent that the agency appears to be interested in substance abuse counselors, VRI has three counselors with specific prior experience in substance abuse counseling, while the resumes of St. Patrick's proposed counselors indicate no such experience.

We conclude that the agency's decision to award the contract to St. Patrick had no rational basis. VRI's proposal was downgraded relative to St. Patrick's under only two evaluation

^{3/} Topics covered by the LPC examination are listed in a brochure published by the Montana Board of Social Work Examiners, which is included in the record; topics covered by the CEAP examination appear in the Certification Guide published by the Employee Assistance Certification Commission.

factors, technical approach and counselor qualifications, and we have found the agency's conclusions improper in both areas. In addition, the agency failed to evaluate VRI's proposed project supervisor, and did not downgrade St. Patrick's proposal for failure to address this requirement. The agency states that technical factors and cost were equally weighted in the evaluation; in view of our conclusions regarding the technical evaluation, there was no apparent basis for awarding St. Patrick a contract at a price 8 percent higher than VRI's under this weighing. While it is not ascertainable exactly what the scoring would have been under a proper evaluation, we think it is clear that the proposals were technically equivalent under the factors indicated in the RFQ, and that price therefore should have been the determining factor in the award decision. Accordingly, we sustain the protest.

By letter of today to the Secretary of Agriculture, we are recommending that the agency terminate St. Patrick's contract for the convenience of the government and make award to VRI if otherwise appropriate. We also find VRI entitled to reimbursement of its costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.6(d) (1991).

The protest is sustained.

for *William J. Fowler*
Comptroller General
of the United States