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**Comptroller General
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**United States Government Accountability Office
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Decision

Matter of: Health and Human Services Group

File: B-402139.2

Date: April 8, 2010

Brian J. Donovan, Esq., Jones & Donovan, for the protester.
Danielle N. Raymond, Esq., and John Sabatino, Esq., Department of Homeland Security, Bureau of Customs and Border Protection, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably evaluated protester's proposal is denied where record shows that evaluation was consistent with solicitation's evaluation criteria, and was not otherwise improper.

DECISION

Health and Human Services Group (HHSG), of Mission Viejo, California, protests the award of a contract to EAP Consultants, Inc., of Marietta, Georgia, under request for proposals (RFP) No. CBP-HSBP1008R1618, issued by the Department of Homeland Security (DHS), Bureau of Customs and Border Protection, for employee assistance services. HHSG asserts that the agency unreasonably evaluated its technical proposal. HHSG also asserts that the agency unreasonably evaluated EAP's experience and past performance, and the realism of its offered price.

We deny the protest.

The solicitation provided for award on a "best value" basis considering several factors: technical approach/general knowledge, personnel qualifications/staffing plan, project management plan, quality assurance plan, transition plan, past performance, and price.¹ RFP at 48-49. Following the submission and evaluation of

¹ While the solicitation also referred to award based on low price and technical acceptability, this reference was only in the context of possible bases for award. RFP at 50. The solicitation otherwise made it clear that DHS would evaluate

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initial proposals, discussions, and the submission and evaluation of final proposal revisions (FPR), EAP's proposal was ranked highest and HHSG's third highest. EAP's proposal received a technical score of 95.5 (of 100 available) points--37 (of 40) for technical approach/general knowledge, 15 (of 15) for personnel qualifications/staffing plan, 9.5 (of 10) for project management plan, 10 (of 10) for quality assurance plan, 4 (of 5) for transition plan, and 20 (of 20) for past performance. Source Selection Decision (SSD) at 2. HHSG's proposal received a technical score of 82.5 points--36.5 for technical approach/general knowledge, 8.5 for personnel qualifications/staffing plan, 6 for project management plan, 8 for quality assurance plan, 3.5 for transition plan, and 20 for past performance. *Id.* EAP's price was low and HHSG's third low. EAP was selected for award based on its highest technical score and lowest price.

DISCUSSION

HHSG challenges the evaluation of its technical proposal under each evaluation factor. In reviewing a protest challenging an agency's proposal evaluation, it is not our role to reevaluate proposals. Rather, we will consider only whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Anwar Al-Anduols, B-401550, B-401550.3, Sept. 22, 2009, 2009 CPD ¶ 188. We have reviewed HHSG's arguments and find that they do not warrant questioning the award. We discuss several of those arguments below.

Technical Approach/General Knowledge

DHS assigned a weakness to HHSG's proposal under the technical approach/general knowledge factor based on a finding that it did not demonstrate that HHSG had experience with EAPA (Employee Assistance Professional Association) standards, and did not otherwise indicate that HHSG would comply with them. Best and Final Offer Evaluation (BAFO Eval.) at 3. HHSG asserts that this weakness was unwarranted because the RFP did not require compliance with EAPA standards.

This argument is without merit. Contrary to HHSG's assertion, the statement of work (SOW) advised offerors that the agency was seeking a program "grounded in EAP Core Technology," SOW at 9 (which, the agency explains, refers to program standards set by the EAPA, Lead Technical Evaluator Statement at 4), and the solicitation expressly provided that the agency would evaluate, among other things, "Demonstrated experience . . . consistent with EAPA standards for assessment. . . ." RFP at 48. Given these RFP provisions, since HHSG's proposal did not demonstrate

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proposals in accordance with the criteria on page 48 of the RFP, and make award on a best value basis. RFP at 40.

experience with EAPA standards, or otherwise indicate that HHSG would comply with them, the evaluation was reasonable.²

Personnel Qualifications/Staffing Plan

The personnel qualifications/staffing plan factor encompassed consideration of, among other things, whether proposed key personnel, including a project manager, met or exceeded specified requirements. RFP at 49. HHSG's proposal was assigned a weakness under this factor based on the agency's finding that the project manager would be involved in clinical activities but did not have a clinical license. BAFO Eval. at 3.

HHSG maintains that this weakness was unwarranted because the RFP did not require the proposed project manager to have a clinical license. The protester further asserts that, in any case, its proposed project manager in fact will not have any clinical responsibilities.

While conceding that the solicitation did not require the project manager to have a clinical license, the agency reports that it assigned the weakness based on the following statement in HHSG's FPR:

[The project manager] will review, on a monthly basis, all clinician case management and billing forms, including clinical consultations, trauma response, formal referrals, and training. This review will be based on a peer review matrix that will include various types of information related to clinical services performed by the Affiliate Counselor. . . .

FPR at 47. The agency concluded from this statement that the project manager would be involved in clinical oversight and clinical quality control activities, and that he would need a clinical license to be qualified to perform these activities; his lack of a license therefore was considered a weakness. Supplemental Affidavit at 2.

HHSG does not disagree that the project manager will have some role in managing the clinical operations. It argues, however, that nothing in its proposal suggests that the project manager would be involved in the daily operations of the clinic, so as to require a clinical license, and notes that the agency has not identified any benefits that would derive from a license.

² The protester asserts that its proposal did demonstrate compliance with EAPA standards. However, HHSG's proposal addressed the matter with one limited reference to staffing levels, FPR at 65, and the proposal did not otherwise demonstrate that HHSG had experience complying with EAPA standards.

HHSO has not shown that the evaluation was unreasonable. While it may be that the project manager would not have daily involvement with clinical matters, the quoted language from the proposal clearly shows that he is intended to have involvement in clinical activities, in the form of reviewing “all clinician case management and billing forms, . . . clinical consultations, trauma response, formal referrals, and training.” FPR at 47. The agency determined that this description indicated involvement in clinical activities at a level that would require a license, and the protester has not established some clear delineation between the proposed activities and those performed by a clinical director, or those that otherwise would require a license. There certainly is nothing in the language of the proposal that would preclude the agency’s finding that the identified activities are clinical in nature, and HHSO has not otherwise shown that this conclusion was unwarranted. We conclude that there is no basis to question the evaluation in this area.

Transition Plan

The agency assigned HHSO’s proposal 3.5 of the 5 possible points under the transition plan factor on the basis that the proposal did not fully demonstrate the steps needed for smooth transition. HHSO asserts that it was unreasonable to downgrade its proposal for failing to provide a more detailed discussion of the transition steps because the solicitation did not require a detailed transition plan until after award. In response, the agency explains that it assigned the proposal fewer than the maximum points under this factor because it only minimally addressed the RFP’s transition plan requirements; in the agency’s view, while the proposal provided a good discussion of what was required of the agency during transition, it did not provide similar information describing HHSO’s transition responsibilities. Technical Evaluation Report at 9. The agency states that, in any case, it did not downgrade the proposal; it simply assigned it a fully acceptable average rating. Lead Technical Evaluator Statement at 9.

The evaluation in this area was reasonable. The protester is correct that the RFP did not require the submission of a detailed transition plan until after award. However, the RFP did require offerors to

[d]escribe the strategy and approach to full implementation and assumption of full responsibilities for all requirements contained in the solicitation requirements. This assessment will include an evaluation of the sufficiency of the offeror’s mobilization, training, and orientation of the work force.

RFP at 47. Thus, while a detailed transition plan was not required until after award, offerors were required to address their strategy and approach for performing during the transition period. Since HHSO’s proposal only minimally addressed these requirements, and did not discuss HHSO’s responsibilities during the transition period, there was nothing unreasonable in the agency’s assigning HHSO’s proposal a

fully acceptable rating under the transition plan factor. In this regard, there is nothing unreasonable in an agency's assigning a proposal less than the maximum rating where it meets, but does not exceed, solicitation requirements. See MINACT, Inc., B-400951, Mar. 27, 2009, 2009 CPD ¶ 76 at 6.

Project Management Plan

HHSO challenges the evaluation of its proposal under the management plan factor, where it received 6 of the 10 possible points. However, even if we agreed with HHSO that its proposal should have received the full 10 available points,³ its proposal would remain only third-ranked technically, with 86.5 points versus the awardee's 95.5 points, and its price would remain third low. SSD at 2. Thus, HHSO was not prejudiced by any improper evaluation in this area. Evans Sec. Solutions, Inc., B-311035, Mar. 19, 2008, 2008 CPD ¶ 58 at 2.

Evaluation of EAC's Proposal

HHSO asserts that the agency unreasonably evaluated EAC's proposal under the technical approach and past performance factors, and failed to evaluate the realism of its price.

The award of a contract under a federal procurement may be challenged only by an interested party; that is, an actual or prospective offeror whose direct economic interest would be affected by the award of or failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2009). Where, as here, there is an intervening offeror that would be in line for award if the protester's challenge to the award were sustained, we consider the protester's interest to be too remote to qualify it as an interested party. Evans Sec. Solutions, Inc., *supra*. The record shows that, of the four proposals received and evaluated, HHSO's was ranked third for the combined technical and past performance factors and third as to price. SSD at 2. Another offeror's proposal was ranked second both technically and as to price. *Id.* This being the case, that offeror, not HHSO, would be next in line for award if this aspect of HHSO's protest were sustained. Accordingly, HHSO is not an interested party to challenge the award to EAP.

Untimely Arguments

In its March 8 comments on the agency report, HHSO argues for the first time that DHS failed to hold meaningful discussions regarding its technical proposal, and that

³ It is unlikely that HHSO's proposal would have received the maximum score, since HHSO does not even challenge all of the weaknesses the agency assigned under this factor.

the scores assigned its proposal under the technical evaluation factors were unreasonable due to inconsistencies in the scoring by different evaluators.

Under our Regulations, a protest based on other than an apparent solicitation impropriety must be filed within 10 calendar days after the protester knows or should have known the basis of protest. 4 C.F.R. § 21.2(a)(2). Where, as here, a protester raises supplemental protest grounds, each new ground must independently satisfy the timeliness requirements. QualMed, Inc., B-257184.2, Jan. 27, 1995, 95-1 CPD ¶ 94 at 12-13. The arguments raised in HHS's comments are based on documents HHS received from the agency no later than February 23. Since HHS did not raise these arguments until March 8, more than 10 days later, they are untimely and will not be considered. HHS's comments also include arguments challenging the evaluation of its proposal on additional specific grounds—for example, it asserts that the agency unreasonably concluded that two of its proposed counselors were not qualified. These arguments, too, are untimely. While HHS raised several specific challenges to the evaluation of its proposal in its original protest, these new specific challenges were not raised. As noted above, specific alleged evaluation defects each must independently satisfy our timeliness rules, QualMed, Inc., *supra*; a staggered presentation of examples of alleged defects is not permitted by those rules. FR Countermeasures, Inc., B-295375, Feb. 10, 2005, 2005 CPD ¶ 52 at 9.

The protest is denied.

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Acting General Counsel