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Decision

Matter of: CRAssociates, Inc.

File: B-406018; B-406018.2

Date: February 13, 2012

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Harold W. Askins III, Esq., Department of Veterans Affairs, for the agency.

Linda C. Glass, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency evaluation of proposals is unobjectionable where it is reasonable and consistent with solicitation evaluation criteria, and adequately documented.

DECISION

CRAssociates, Inc. (CRA) of Newington, Virginia, protests the award of a contract to Sterling Medical Associates, Inc., of Cincinnati, Ohio, under request for proposals (RFP) No. VA-247-10-RP-0069, issued by the Department of Veterans Affairs (VA) for the procurement of primary and mental health services at the community-based outpatient clinic (CBOC) in Rock Hill, South Carolina. The protester challenges the agency's evaluation of proposals and selection decision.

We deny the protest.

BACKGROUND

The RFP provided for the award of a fixed-price contract for a contractor-owned/contractor-operated CBOC to meet the health care needs of veterans for a base year and four option years. Offerors were informed that treatment of patients was to begin not later than ninety days after the date of award. RFP at 5. A detailed performance work statement was provided for the required services and, as relevant here, personnel qualifications. See, e.g., id. at 32-36.

Among other things, offerors were required to provide “physicians who are Board Certified in either Internal Medicine or Family Practice Medicine.” Id. at 35.

The RFP, as amended, provided for award on a best value basis, considering the following factors: relevant experience; past performance; management/technical approach; personnel; socio-economic status;¹ and price. RFP amend. 12, at 3-4. Offerors were informed that technical evaluation factors were of equal value and, when combined, were significantly more important than price. RFP amend. 12, at 4.

The RFP provided instructions for the preparation of proposals under each evaluation factor. As relevant here, under the management/technical approach factor, offerors were instructed to describe their plans to staff, manage and accomplish the requirements and provide sufficient information to show that they understand the nature of the work and have a plan for providing the required services. Id. Offerors were to address quality of business practices, assuring quality service, minimizing personnel turnover of both key and non-key personnel, providing a contingency plan to handle scheduled and unscheduled leave, having a transitional plan fully operational by the date stated in the RFP, and ensuring overall timely delivery of services. Id. Offerors were also informed that the transition period was not funded. Id.

With respect to the personnel factor, offerors were instructed to describe “the personnel resources proposed, their availability, and their roles/responsibilities in relation to implementation of these requirements.” Id. The RFP required that offerors provide resumes for proposed key personnel identifying their relevant experience and credentials. Id. In this regard, the RFP required offerors to provide for each physician assigned under the contract copies of (1) board certification in internal medicine and/or family practice; (2) an active, current, and unrestricted license; (3) a curriculum vitae; and (4) a completed application form, including three letters of reference. Id. at 4-5.

The agency received proposals from CRA (the incumbent contractor) and Sterling, which were evaluated by agency’s 5-member technical evaluation board (TEB). CRA’s technical proposal received an overall adjectival rating of exceeds.² See Agency Report (AR), Tab 9, Technical Evaluations, at 1. In this regard, the evaluators rated CRA’s proposal as exceeds under the relevant experience and

¹ The RFP provided that firms qualifying as Small Disadvantaged Veteran-Owned Small Business (SDVOSB) concerns would receive full credit for this evaluation factor and firms qualifying as Veteran-Owned Small Business (VOSB) concerns would receive partial credit. See RFP amend. 12, at 5.

² Proposals were evaluated under the technical evaluation factors as exceeds, acceptable, marginal, or unacceptable. See AR, Tab 3, Source Selection Plan, at 5.

management/technical approach factors, and as acceptable under the past performance and personnel factors. Id. The TEB did not assign an overall technical consensus rating for Sterling's proposal, but Sterling's proposal was rated acceptable under the past performance, relevant experience and management/technical approach factors, and marginal under the personnel factor by a majority of the evaluators. Id. at 8-12.

The evaluation scores were provided to the contracting officer (CO), who was the source selection authority for this procurement. The CO conducted a conference call with the TEB to discuss their findings.

During the call, board members acknowledged that they wanted the incumbent contractor [CRA] due to their relationship they had built up as well as there would be no transition of care. It was explained to the board that those items cannot be used to score proposals. They must score based on the evaluation factors and how each proposal met those factors. The Contracting Officer explained that they can only evaluate on the evaluation factors provided. To provide exceeding remarks because they "know the staff", and providing marginal remarks because they don't know the other staff would not be acceptable.

AR, Tab 7, Price Negotiation Memorandum, at 4. The TEB reconvened to reevaluate the proposals.

Following the conference call, the TEB chair informed the CO that the TEB was unable to identify any areas where one proposal was considered to be superior to the other.³ Id. The CO reevaluated the proposals. Although the CO noted that there were some differences between the two proposals, she found that both proposals merited an overall acceptable rating and were technically equivalent. See id. at 5-6. Given the proposals' technical equivalence, the CO determined that award should be made to Sterling on the basis of its lower proposed price (\$24.9 million as compared to CRA's price of \$28.9 million). Id. at 4, 6.

Award was made to Sterling, and following a debriefing, CRA protested to our Office.

³ Although the Price Negotiation Memorandum indicates that the TEB chair was to provide further written documentation to the CO, this documentation is not included in the record.

DISCUSSION

CRA raises a number of challenges to the agency's evaluation of proposals and selection decision. We have considered all of the protester's arguments. While we agree with the protester about certain inadequacies in this record, when the record is viewed as a whole, we find no basis to object to the agency's selection of Sterling's proposal.

Management/Technical Approach Factor

CRA raises various challenges to the agency's evaluation of proposals under the management/technical approach factor. CRA first contends that Sterling's proposal should not have been found acceptable under this factor, because Sterling did not offer to provide a CBOC within 90 days of contract award, as required by the RFP. CRA also contends that Sterling's transition plan does not indicate that the awardee would obtain required permits and licenses for its clinic. See Supp. Protest/Comments at 14-15.

In reviewing protests of alleged improper evaluations and source selection decisions, it is not our role to reevaluate submissions; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27 2007, 2007 CPD ¶ 141 at 3. A protester's mere disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

Contrary to CRA's arguments, Sterling's transition plan detailed the steps the firm would take to be fully operational within the required 90-day period. Sterling's Proposal at 72-75. The agency found this plan to be acceptable. See AR, Tab 7, Price Negotiation Memorandum, at 5. Although CRA maintains that Sterling's transition plan did not provide for obtaining permits and licenses for the facility, Sterling's plan addressed resolving all required paperwork for site, including the site improvement permit application, 80 days prior to commencement of operations. See Sterling's Proposal at 72. We find no basis to question the agency's judgment that Sterling's transition plan was acceptable.

CRA also challenges the CO's determination that the firms' proposals were technically equivalent under the management/technical approach factor. Specifically, CRA states that a number of the Sterling's physicians were proposed on a locum tenens basis, which, according to CRA, means that the physicians are

employed on a temporary basis.⁴ Although CRA acknowledges that there is nothing inherently wrong with proposing locum tenens physicians, see Suppl. Protest/Comments at 16, CRA contends that Sterling's approach will negatively impact Sterling's ability to provide continuity of care, and to operate smoothly during the transition period. As the incumbent contractor, CRA notes that it will encounter no issues related to providing continuity of care, and will require no transition efforts.⁵ See Protester's Suppl. Protest/Comments at 6-7.

As noted above, the RFP provided, under the management/technical approach factor, for the evaluation of offerors' approaches to how they plan to staff, manage and accomplish the contract requirements. See RFP amend. 12, at 4. This included evaluating approaches to assuring quality service, minimizing personnel turnover, and transitioning within 90 days after award. The VA found that both firms described their approaches to staffing, managing, and accomplishing the contract requirements. Although CRA contends that, as the incumbent, it should have been viewed as superior to Sterling under this factor, this contention reflects nothing more than disagreement with the agency's judgment that both firms' proposals only demonstrated approaches meriting acceptable ratings.

With respect to CRA's complaint that Sterling offered physicians on a locum tenans basis, as the protester itself recognizes, there is nothing inherently improper with the offer of physicians on this basis. In fact, Sterling's proposal shows that some of its proposed physicians have been providing locum tenans services to Sterling and others, including the VA, for a number of years. There is no basis on this record to conclude that Sterling's offer of physicians on a locum tenans basis, as opposed to a permanent employment basis, raises a concern with Sterling's proposed continuity of care.

⁴ Locum tenens is a Latin phrase meaning "holding the place." See Black's Law Dictionary, 4th ed., at 1,090.

⁵ CRA also asserts that Sterling's proposal of physicians on a locum tenans basis calls into question the agency's determination that the firms' proposals were technically equivalent under the personnel factor. See Protester's Suppl. Protest/Comments at 9-10. The protester does not explain, however, how this should have affected the agency's evaluation of proposals under this factor. As explained above, the RFP required offerors, with respect to the personnel factor, to describe the personnel resources proposed, their availability, and their roles/responsibilities in relation to implementation of the requirements. See RFP amend. 12, at 4. In this regard, offerors were requested to provide resumes of the proposed key personnel identifying their relevant experience and credentials. Id. Both offerors satisfied these requirements.

Personnel Factor

In its initial protest, CRA generally argues that Sterling's proposal must have been unacceptable under the personnel factor, because Sterling has been advertising for medical professionals since receiving award, which, in CRA's view, shows that Sterling did not propose personnel satisfying the RFP's requirements. In a supplemental protest filed after review of the agency's report, CRA argues that three of Sterling's proposed physicians lacked board certification in internal medicine or family practice, as required by the RFP. See Suppl. Protest/Comments at 10.

With respect to Sterling's initial general argument, we will not conclude that Sterling's proposal was deficient, or the agency's evaluation was unreasonable simply because Sterling has been advertising for medical professionals since receiving award. In fact, as discussed more fully below with regard to CRA's arguments that Sterling is engaged in a "bait and switch," Sterling's proposal, on its face, advised that if it received the award it would recruit for backup employees. See Sterling Technical Proposal at 82, 209.

With respect to CRA's more specific allegation in its supplemental protest, the record shows that Sterling failed to provide copies of valid board certifications for three of its proposed physicians. On the other hand, Sterling represented in its proposal that all of its proposed physicians had the required board certification and provided, in attachment B to its proposal, copies of licenses, board certifications, curriculum vitae, application forms, and letters of reference for the remainder of its proposed physicians.

Despite Sterling's omission, the VA concluded that all of Sterling's physicians had the appropriate board certification. During the course of this protest, Sterling provided evidence of valid board certification in internal medicine or family practice (valid at time of proposal submission) for each of the three physicians identified by CRA. Sterling's Response to Jan. 9, 2012, Request for Additional Information. We conclude from this record that, although VA erred in its evaluation and, in essence, waived the requirement that offerors' provide copies of board certifications in their proposals, Sterling in fact satisfied this requirement, as it had represented in its proposal. As a result, CRA was not prejudiced by this error.

Bait and Switch

CRA also contends that since award, Sterling has been advertising for physicians and that this coupled with Sterling's proposal of physicians on a locum tenens basis shows that Sterling is "planning" a bait and switch and would not use the physicians proposed in its proposal. See Suppl. Protest/Comments at 16.

An offeror may not propose to use specific personnel that it does not expect to use during contract performance; doing so would have an adverse effect on the integrity

of the competitive procurement system and generally provides a basis for proposal rejection. AdapTech Gen. Scientific, LLC, B-293867, June 4, 2004, 2004 CPD ¶ 126 at 5. To establish an impermissible bait and switch scheme, a protester must show that a firm either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance, and that the misrepresentation was relied on by the agency and had a material effect on the evaluation results. Data Mgmt. Servs. Joint Venture, B-299702, B-299702.2, July 24, 2007, 2007 CPD ¶ 139 at 10.

Here, there is no evidence in the record that Sterling has sought to replace any of its proposed physicians. In this regard, Sterling's recruitment activities after award are consistent with the firm's proposal, in which Sterling stated that following award, it would conduct an active recruitment for backup candidates and would contact incumbent personnel to see if any were available. See, e.g., Sterling Technical Proposal at 182, 209. In short, we find no merit to CRA's allegation that Sterling engaged in a bait and switch.

Source Selection Decision

CRA also raises numerous challenges to the propriety of the CO requesting that the TEB review its evaluation and to the CO's subsequent conclusion that both proposals were technically equivalent. While CRA disagrees with the assessment of the proposals, the record shows that the CO reasonably found that the proposals were technically equivalent from her own review, and from the inability of the TEB to identify significant differences between the proposals.

Source selection officials have broad discretion to determine the manner and extent to which they will make use of evaluation results, which are merely guides for the source selection official, who must use her own judgment to determine what the underlying differences between proposals might mean to successful performance of the contract. Information Network Sys., Inc., B-284854, B-284854.2, June 12, 2000, 2000 CPD ¶ 104 at 12. In this regard, source selection officials are not bound by the recommendations of lower-level evaluators. All Points Int'l Distribs., Inc., B-402993, B-402993.2, Sept. 3, 2010, 2010 CPD ¶ 209 at 3.

Here, contrary to CRA's argument that there is no documentation of the CO's review of the proposals, the record shows that the CO recognized the merits of each proposal under each evaluation factor. See AR, Tab 7, Price Negotiation Memorandum, at 5-6. In this regard, she recognized CRA's greater relevant experience and provision for continuity of staff, but also recognized that Sterling had provided a good transition approach and contingency backup coverage. Id.; see also CO's Statement at 6-8. We thus find that the CO considered the respective merits of

each proposal in determining that the proposals were essentially technically equal. Although CRA, citing to its incumbent advantages, disagrees with this assessment, it has not shown that the CO's judgment was unreasonable.

The protest is denied.

Lynn H. Gibson
General Counsel