



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Rotech Medical Corporation

File: B-283295.2

Date: November 8, 1999

Carlos Moral for the protester.
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Department of Veterans Affairs, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably determined that the awardee's proposed staffing and facilities approach was better than the protester's, notwithstanding that the protester currently operates more facilities and employs more personnel than the awardee, where the awardee submitted a more detailed, comprehensive proposal.
2. Agency was not required to contact the protester's past performance references, where the solicitation contemplated a past performance evaluation based only upon proposal documentation.
3. Where the protester's proposal included negative performance information from an accrediting organization, and the protester failed to dispel the legitimate concerns raised by this information during discussions, the agency had no obligation to disregard the negative performance information simply because it did not suffice to deny the protester accreditation, nor was the agency required to contact the accrediting organization to investigate the information.

DECISION

Rotech Medical Corporation protests the award of a contract to Lors Medical Corporation under request for proposals (RFP) No. 247-001-99, issued by the Department of Veterans Affairs (VA), for the provision of home oxygen services in the Veterans Integrated Service Network (VISN) #7 covering Alabama, Georgia, and South Carolina.

We deny the protest.

The solicitation contemplated the award of a fixed-price contract for a variety of supplies and services associated with home oxygen care to veterans. RFP § 52.216-1. The RFP, as amended, requested unit and extended prices for the various supplies and services for a base year plus 4 option years. RFP addendum to Standard Form 1449 – Block #20.

The solicitation provided for award to the offeror whose proposal, conforming to the solicitation, would be most advantageous to the government, based on a scoring system recognizing the solicitation's evaluation factors. RFP § 52.212-2, Evaluation -- Commercial Items. The RFP listed four evaluation factors in descending order of importance, which the agency quantified on an internal 100-point scoring scale consistent with the RFP, as follows: (1) past performance and demonstrated capability (35 points), (2) quality assurance (30 points), (3) personnel qualifications (20 points), and (4) cost/pricing (15 points). *Id.*; Agency Report, Tab 12, Evaluation Criteria & Scoring Sheet. Under the past performance and demonstrated capability factor, the offeror was to document, among other things, its ability to provide a sufficient number of adequately trained personnel and its ability to meet the solicitation's response time requirements for supplies and services based on the sites and staff proposed for performance. RFP addendum to § 52.212-2, ¶¶ B.2, B.3.a.

VA received eight initial proposals and, after evaluating them, included six, including Lors's and Rotech's, in the competitive range. Agency Report at 3. The agency conducted a round of discussions and received offerors' final proposal revisions (referred to in the record as "refined proposals"). *Id.* Lors was found to have submitted the highest-rated and lowest-priced proposal. Agency Report, Tab 21, Technical Scores (Final), Pricing Scores (Final). Lors's proposal also received the highest combined technical and price score of 92.53 points, scoring 77.53 of the available 85 technical points and the maximum number of price points (15 points). Lors's proposal was priced 28 percent less than Rotech's next lowest-priced proposal; Rotech's price score (10.87 points) reflected this price disadvantage. In terms of technical merit, Rotech's proposal was the lowest-rated of the competitive range proposals, scoring only 49.48 out of 85 technical points. Rotech's proposal also received the lowest combined price and technical score of 60.35 points. Based on the price and technical evaluation results, the agency made award based on Lors's highest-rated, lowest-priced proposal.

Rotech protests that VA misevaluated aspects of its own and Lors's proposal. In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record only to determine whether the agency's judgment was reasonable and in accord with the RFP's stated evaluation factors. Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CPD ¶ 195 at 3. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable. TRW, Inc., B-260623 et al., July 7, 1995, 95-2 CPD ¶ 92 at 6.

Rotech first argues that the agency miscalculated its and Lors's proposals under the past performance and demonstrated capability factor. In particular, Rotech argues that it operates more service centers and employs more personnel than Lors within the VISN #7 service area. Protester's Comments ¶ 4. As a result, Rotech contends that it is better able than Lors to provide a sufficient number of adequately trained personnel and to meet the RFP's response time requirements. Rotech thus argues that its proposal should have received a better score under the past performance and demonstrated capability factor than Lors's proposal.

Although Rotech may have more service centers and employees currently in place than Lors, the awardee thoroughly documented its plan to open additional service centers and to provide adequate, qualified staff at these service centers. Lors's Initial Proposal at 13-15. Lors also thoroughly documented the qualifications of its existing staff, explained how it would reallocate certain existing staff members to the VISN #7 service area, and explained how it would provide adequate staff at the proposed service centers to meet the RFP requirements. Lors's Initial Proposal at 15, 16, Tab 12. Having reviewed Lors's proposal, we find no basis to question the agency's judgment that the awardee's staffing and service center approach reflected "comprehensive considerations" and demonstrated "a readily achievable capability to provide sufficient staffing." Agency Report, Tab 20, Final Technical Comments for Awardee, at 1. On the other hand, regardless of whether the protester currently operates more service centers or employs more staff, its proposal was disorganized, confusing, and largely bereft of narrative detail as to how it would meet the RFP requirements, as compared with Lors's well-conceived and well-written technical approach. Compare Lors's Initial Proposal at 12-16 with Rotech's Initial Proposal § 7, Branches' Service Areas for VISN 7, and Rotech's Refined/Final Proposal, enclosures (3a), (3b), (4), and Dublin, GA Location Issue. In conclusion, our review of the two proposals supports the agency's determination that Lors's staffing and service center approach was better documented than Rotech's and justified better scores under the past performance and demonstrated capability factor.

The protester also claims that the agency improperly contacted only the awardee's past performance references in evaluating proposals under the past performance and demonstrated capability factor. This allegation has no merit. Contrary to the protester's apparent belief, the past performance and demonstrated capability factor neither requested past performance references, nor did it provide that the agency would contact references during the proposal evaluation. RFP addendum to § 52.212-2.B. Rather, the RFP provided that the agency would evaluate past performance based on the documentation submitted by the offeror concerning its corporate and personnel experience, and the record reflects that the agency did just that. Id.; Agency Report, Tab 13, Initial Evaluation of Proposals and Tab 20, Final Technical Comments. There is no evidence that the agency contacted past performance references for any offeror, including the awardee, during the proposal evaluation; instead, the agency apparently limited its evaluation to the past performance documentation submitted with each proposal, consistent with the RFP.

The record shows that the agency did not contact Lors's references until the pre-award survey to determine Lors's responsibility. See Agency Report, Tab 36, Letter from Network Contract Specialist to Protester ¶ 7 (Aug. 23, 1999). The protester, an unsuccessful offeror, was not entitled to a pre-award survey. See Federal Acquisition Regulation § 9.100.

Rotech also protests that the agency improperly considered certain negative performance information submitted with its proposal. Under the quality assurance factor, offerors were to demonstrate, among other things, that the facilities proposed for performance were accredited by the Joint Commission of Accreditation of Healthcare Organizations (JCAHO), and to identify any JCAHO citations and the resolution of those citations. RFP addendum to § 52.212-2, ¶¶ C.4, C.5. Rotech not only submitted JCAHO accreditation certificates for its facilities, but also attached a JCAHO "supplemental recommendations" report that documented numerous quality and performance problems. See Rotech's Initial Proposal, JCAHO Supplemental Recommendations Section. Although Rotech received discussions concerning the negative JCAHO information, Rotech's final refined proposal failed to resolve many of the concerns raised by the JCAHO information, which caused the proposal to be downgraded under both the past performance and demonstrated capability factor and the quality assurance factor. See Agency Report, Tab 20, Final Technical Comments for Protester, Factors A and B; see also Rotech's Final/Refined Proposal, Factor C, JCAHO Official Accreditation Decision Report.

Rotech argues that the agency improperly considered the JCAHO information to downgrade aspects of its proposal—in particular, its quality assurance process, disaster plan, and its individualized health care plans. Protester's Comments ¶¶ 2, 6, 7. Rotech contends that the agency should have disregarded the JCAHO "supplemental recommendations" because they "are not binding . . . and are purely consultative in nature." Id. ¶ 7. According to the protester, the agency should have instead considered that, despite the reported quality and performance problems, Rotech's JCAHO scores, which were included in its proposal, were sufficient to receive JCAHO accreditation. Id. In addition, Rotech argues that the agency should have contacted JCAHO to obtain additional information concerning the protester's performance and to obtain other offerors' JCAHO scores. Id. ¶¶ 2, 7. Had the agency done so, the protester argues, the agency would have discovered that the protester's performance was not only adequate, but was better than the awardee's. Id. ¶ 2.

Contrary to the protester's arguments, the RFP did not require the agency to contact the JCAHO for additional information concerning offerors' performance or scores, but contemplated that the agency would consider only the JCAHO information included with each proposal. See RFP addendum to § 52.212-2, ¶¶ C.4, C.5. Thus, the agency reasonably confined its evaluation to the JCAHO information included in the awardee's and the protester's proposals. In its proposal, Lors, consistent with the RFP, documented its JCAHO accreditation, affirmed that it had not received any JCAHO citations, and noted no performance problems. Lors's Initial Proposal at

28-29, Tab 10. The agency's favorable evaluation of Lors's JCAHO documentation comported with the RFP, see Agency Report, Tab 20, Final Technical Comments for Lors, Factor B ¶¶ 4, 5, and provides no basis for objection.

In contrast, the protester's proposal included negative JCAHO information in several areas, and the protester failed to dispel the legitimate concerns raised by this information, despite receiving an opportunity to do so during discussions. The agency had no obligation under the RFP to disregard this negative performance information simply because it did not suffice to deny the protester JCAHO accreditation. Accordingly, we find that the agency reasonably downgraded the protester's proposal because the JCAHO documentation reflected negatively on aspects of its quality assurance process, disaster plan, and its individualized health care plans. While the protester argues that its proposal established a sound approach to quality assurance, disaster preparedness and individualized health care planning, the record reasonably supports the agency's judgment that the protester's proposal was poorly written and poorly documented in these areas.¹ The protester's mere disagreement with that judgment does not establish that it was unreasonable. Shelby's Gourmet Foods, B-270585, Mar. 22, 1996, 96-1 CPD ¶ 166 at 6.

Finally, the protester argues that the agency erred in refusing to consider a 2-percent discount to its aggregate pricing. See Agency Report, Tab 19, Rotech's Final/Refined Pricing Proposal. Regardless of whether the agency should have considered the price discount, we find that any alleged error was not prejudicial. Even had the agency considered Rotech's proposed 2-percent discount, Rotech's lower-rated proposal would have maintained a significant (26 percent) price disadvantage relative to Lors's highest-rated proposal. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-

¹For example, Rotech argues that its quality assurance plan properly documented the average time patients were without oxygen, contrary to the agency's evaluation judgment. However, our review of the record confirms the agency's finding that Rotech's proposal lacked adequate documentation on this issue. See Rotech's Initial Proposal, Veteran Administration Summary Data Sheet; Rotech's Final/Refined Proposal, Response Time; Agency Report, Tab 20, Final Technical Comments for Rotech, Factor A ¶ 4d.

Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996). Here, the agency's failure to consider Rotech's 2-percent price discount did not affect the final award determination and was not prejudicial.²

The protest is denied.

Comptroller General
of the United States

²Rotech also protests that the agency, in evaluating proposals, improperly considered a letter written by the incumbent contractor, in which it encouraged veterans to continue to order home oxygen services from the incumbent, rather than under the contract arising from the instant solicitation. Based on our review, this letter lacked any relevance to, and played no part in, the proposal evaluation in this case.