



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Phoebe Putney Memorial Hospital

File: B-311385

Date: June 19, 2008

Jeffrey E. Weinstein, Esq., for the protester.

Laurel A. Hockey, Esq., Cohen Mohr, for Sterling Medical Associates, an intervenor.

Harold W. Askins III, Esq., Department of Veterans Affairs, 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

1. Protest that agency purportedly performed inadequate cost realism analysis is denied where no such analysis was required because solicitation contemplated award of fixed-price, rather than cost-reimbursement, contract and did not provide for any realism analysis.
 2. Protest challenging scores assigned protester's and awardee's proposals under technical evaluation factors is denied where protester was not competitively prejudiced; even if protester's proposal received maximum possible technical score and awardee's score were reduced in accordance with protester's allegations, awardee would remain in line for award when price scores are considered.
-

DECISION

Phoebe Putney Memorial Hospital (PPMH) protests the award of a contract to Sterling Medical Associates, Inc. under request for proposals (RFP) No. VA-247-07-RP-0122, issued by the Department of Veterans Affairs (VA) for primary care and mental health services for veterans. Phoebe asserts that VA miscalculated its and Sterling's proposals and performed an improper "best value" analysis.

We deny the protest.

The solicitation provided for a best value award of an indefinite-quantity/ indefinite-delivery fixed-price contract based on four evaluation factors (in descending order of importance): experience and staffing (comprised of six subfactors), coordination and continuity of care (six subfactors), past performance (five subfactors), and price. RFP at 67. The solicitation provided that the factors,

including price, would be numerically scored, id. at 66, and that the award would be “based on a scoring system” Id. at 67.

Three offerors responded to the RFP, including PPMH and Sterling. Each of the four members of the source selection evaluation board (SSEB) reviewed the weaknesses and strengths in the technical proposals and assigned the proposals point scores for each subfactor, the total of which became the factor score assigned by that evaluator. The evaluators’ factor scores were then averaged to calculate the offeror’s final score for each factor and the total technical score. The contracting officer reviewed and assigned point scores to the price proposals, with the lowest-priced proposal receiving the maximum points (23) and each of the successively higher priced proposals receiving a percentage of the 23 points based on their deviation from the lowest price. The technical and price scores were then added together for a total proposal score.

PPMH’s proposal received 75.44 (out of 77 possible) technical points and 8.95 points for price, for a total score of 84.39 points. Price Negotiation Memorandum (PNM) at 2. Sterling’s proposal received 75.31 technical points and 21.07 price points, for a total score of 96.38. Id. The source selection authority (SSA) reviewed the evaluation results and selected Sterling for award. PPMH protests the award decision.

PRICE EVALUATION

PPMH protests that VA failed to perform an adequate price evaluation of Sterling’s proposal. Specifically, PPMH complains that VA failed to consider Sterling’s low pricing in the context of rising health care costs, failed to consider hidden costs in Sterling’s proposal such as having lab testing performed at a remote VA location, and did not consider whether Sterling’s proposed price was adequate to provide care in compliance with various VA directives. PPMH’s argument is, in essence, that VA failed to perform a cost realism analysis of Sterling’s proposal to determine if the government would actually pay more for the services than Sterling’s proposed price.

This argument is without merit. As noted, the RFP contemplated the award of a fixed-price contract. There is no requirement that a realism analysis be performed when award of a fixed-price contract is contemplated. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 9. This reflects the fact that it is unobjectionable for a firm to submit a below-cost proposal for a fixed-price contract, since fixed-price contracts generally are not subject to adjustment during performance and the contractor, not the agency, bears the financial risk of increases in the cost of performance. Id. While an agency may provide in the solicitation for a price realism analysis of fixed-price proposals to assess offerors’ understanding of the solicitation requirements, the RFP here did not do so. Crown Title Corp., B-298426, Sept. 21, 2006, 2006 CPD ¶ 145 at 6. Thus, the agency’s failure to perform such an analysis does not provide a basis for questioning the award.

AWARD DECISION

PPMH challenges the award decision on a number of bases: (1) the award decision was improper because it was based on the point scores reported to the SSA by the SSEB, and the scoring summary on which the decision was based contains some inflated scores for Sterling--PPMH notes, for example, that while one evaluator awarded Sterling's proposal 23 points under the experience and staffing factor, none of the scores for this factor on the summary sheet is lower than 25.25 points;¹ (2) one member of the SSEB improperly deducted 4 points from PPMH's technical score with no explanation;² and (3) VA unreasonably failed to assign PPMH's proposal a significant strength under the accessibility subfactor for offering radiology services at a site directly across the street from its primary care center (Sterling, in contrast, offered to perform the services two miles away from its primary care center).³

We 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-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). There is no basis to find that PPMH was prejudiced here.

¹ PPMH asserts that, while the agency purportedly based the award decision on price because the proposals were judged to be technically equal, in fact, the SSEB determined that the proposals were technically acceptable, not that they were equal. However, the record shows that, while the SSEB referred to the proposals as technically acceptable, the SSA determined that the proposals were technically equal based on her review of the proposals' substantive differences and the point scores.

² PPMH argues that the evaluation was unreasonable because different evaluators assigned proposals different scores under the same factor. This argument is without merit. There is nothing unusual or improper in evaluators reaching different conclusions and assigning different scores when evaluating a proposal, since both subjective and objective judgments are involved. The mere presence of such apparent inconsistencies does not give rise to a valid protest basis. See Novel Pharmaceutical, Inc., B-255374, Feb. 24, 1994, 94-1 CPD ¶ 149.

³ In the comments filed on April 18 in response to the agency report, the protester argued for the first time that the agency improperly failed to assign its proposal significant strengths for five additional elements of its proposal. However, PPMH knew from its March 13 debriefing the strengths assigned to its proposal. Accordingly, these challenges to the evaluation, filed more than 10 days after the debriefing, are untimely. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2008); Sealift, Inc., B-298588, Oct. 13, 2006, 2006 CPD ¶ 162 at 2 n.1.

As noted above, the RFP provided that the evaluation factors would be point scored and that the award decision would be based on the scoring system. Consistent with the RFP, in making the award decision, the SSA combined the technical and point scores to determine the awardee (although the record shows that she also considered the substantive differences among the technical proposals of the three offerors, PNM adden. at 1). PNM at 2; PNM adden. at 3. As noted above, PPMH had an overall score of 84.39 based on technical and price scores of 75.44 and 8.95, respectively, while Sterling's corresponding scores were 96.38, 75.31, and 21.07. Adjusting Sterling's technical score downward based on the discrepancies between the individual evaluator's score sheets and the summary sheet, Sterling's technical score decreases to 72.31 and its total score to 93.38.⁴ In light of the relatively limited effect of these adjustments, even if PPMH's proposal received the maximum (77) technical points available, its total score would increase only to 85.95 (77 technical points plus 8.95 price points). Sterling's total score therefore would remain substantially higher than PPMH's and Sterling would remain in line for the award. On this record, there thus is no basis to conclude that PPMH was prejudiced by any errors in the evaluation or scoring. See Legacy Mgmt. Solutions, LLC, B-299981.2, B-299981.4, Oct. 10, 2007, 2007 CPD ¶ 197 at 78.

SITE VISIT

Under the accessibility subfactor (under the coordination and continuity of care factor), the RFP indicated that the agency would conduct a site visit to evaluate accessibility. PPMH complains that the VA did not conduct a site visit of Sterling's facility. Had the agency done so, according to the protester, it would have found Sterling's facility lacking and downgraded its proposal. In response, VA explains that it determined that it was unnecessary to conduct a site visit of offerors' facilities to evaluate accessibility because it was able to conduct the evaluation based on the information provided in the proposals and additional information from the Internet. Contracting Officer's Statement (COS) at 4.

Again, where there is no basis for finding competitive prejudice to the protester, we will not sustain a protest challenging the waiver of a solicitation requirement. United Def. LP, B-286925 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 27. Competitive prejudice from such a waiver exists only where the requirement was not similarly waived for the protester, or where the protester would be able to alter its proposal to its competitive advantage if given the opportunity to respond to the relaxed term. Id.

⁴ VA acknowledges that there are in fact some discrepancies between the point scores listed on the individual evaluators' score sheets and the summary score sheet. We have recomputed Sterling's scores based on the scores reflected in the individual evaluators' sheets. These changes result in a total overall score of 72.31 technical points for Sterling's proposal.

PPMH suffered no prejudice as a result of VA's decision to waive the site visit. VA waived the requirement for all offerors, including PPMH, and PPMH does not argue, and there is no reason to believe, that it could have altered its proposal to its competitive advantage if it had known of the waiver. We also note that the record supports the agency's position that it had sufficient information to evaluate accessibility without the site visits. In this regard, while PPMH speculates that the agency may have downgraded Sterling's proposal based on, for example, the number of parking spaces available, Sterling discussed the number of available parking spaces in its proposal. Sterling Proposal at 41.

The protest is denied.

Gary L. Kepplinger
General Counsel