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Decision

Matter of: Kuhana-Spectrum

File: B-401270

Date: July 20, 2009

Antonio R. Franco, Esq., Steven J. Koprince, Esq., Kelly E. Buroker, Esq., and Amy McPartland, Esq., Piliero Mazza PLLC, for the protester.

Jonathan M. Bailey, Esq., Bailey & Bailey, P.C., for Casepro, Inc., Patricia H. Wittie, Esq., and Kathryn E. Swisher, Esq., Oldaker, Belair & Wittie, LLP, for The Chesapeake Center, Inc., Edward J. Tolchin, Esq., Fettman, Tolchin, Majors PC, for InGenesis Arora Healthcare LLC, the intervenors.

Julia P. Hatch, Esq., Department of the Navy, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably found that the past performance of the protester represented a moderate risk based upon documented and undisputed performance problems under the predecessor and other very relevant contracts, notwithstanding numerous instances of reported successful performance under other contracts.

DECISION

Dynamic Health Care Alliance, LLC d/b/a/ Kuhana-Spectrum protests the award of contracts to CasePro, Inc., Professional Performance Development Group, Inc. (PPDG), The Chesapeake Center, Inc., and InGenesis Arora Healthcare, LLC under request for proposals (RFP) No. N62645-08-R-0007, issued by the Department of the Navy, Naval Medical Logistics Command (NMLC), for healthcare personnel. Kuhana-Spectrum challenges the Navy's past performance and technical evaluations.

We deny the protest.

The RFP, issued on May 27, 2008 as a total small business set-aside, sought to procure health care workers for the Naval Medical Center Portsmouth (NMCP). The solicitation contemplated the award of a minimum of three indefinite-delivery, indefinite-quantity contracts for a 5-year period, and advised that "[t]he contractor shall furnish qualified Health Care Workers . . . [under] individual Task Orders" to satisfy the government's requirements. RFP at 4. The solicitation identified the

health care workers to be provided under the contract under seven broad labor bands/categories keyed to corresponding contract line items (CLIN) identifying maximum order quantities. The categories were physicians, allied health, advanced practice nurses, nurses, technologists, technicians, and assistants.

The RFP provided for award on a best-value basis considering the evaluation factors of past performance, management planning and market research, and business proposal.¹ The RFP stated that the past performance factor was significantly more important than the management planning and market research factor and that the combination of these two factors was significantly more important than the business proposal factor. RFP at 143.

With regard to the past performance factor, the RFP stated that the “past performance evaluation team will first evaluate the Offeror’s Past Performance information to determine whether the company has relevant Past Performance” and stated that the team “will then evaluate the quality and quantity of the offeror’s Past Performance” and that the team “is not restricted from evaluating and considering other relevant Past Performance information in its possession and may contact references for that information.” The RFP advised that based on the relevance, quality, and quantity of the offeror’s Past Performance the agency would assess the risk to the government of future non-performance of solicitation requirements.² RFP at 144. For this purpose, offerors were required to submit information pertaining to not more than five of the offeror’s previous/current contracts that are relevant to the requirements of the solicitation. RFP at 140.

Under the management planning and market research factor, the RFP stated that “[b]ased on the comprehensiveness, specificity, realism, and quality of the plans, capabilities, and research demonstrated within the offeror’s proposal, the Technical Evaluation Team will assess the risk to the Government of future non-performance of solicitation requirements by the offeror.” The factor further advised that “[t]he Technical Evaluation Team will not assume that the offeror possesses any capability or knowledge unless it is specified in the proposal.” RFP at 144. In addition, the solicitation’s proposal preparation instructions provided that “[t]he offeror shall provide a persuasive written discussion demonstrating their contract management

¹ Under the business proposal factor, the agency evaluated the offeror’s proposal for completeness and price reasonableness.

² Although the protester maintains that relevance, quality and quantity were evaluation subfactors of the past performance factor and that the agency was required to assign equal weight to these putative subfactors in evaluating proposals for past performance, it is clear from the solicitation that relevance, quality, and quantity were not identified as subfactors, but were elements of past performance that the agency would take into account in evaluating overall past performance.

capabilities; the discussion shall be specific to the requirements of the solicitation.” The solicitation instructions further stated that “the plan shall discuss the corporate personnel, by name and title, who will be responsible for contract start-up and the ongoing administration of key functional areas, such as recruitment and scheduling” and “[t]he plan shall describe the range of responsibilities for each individual and should discuss how the qualifications and experience of each individual will contribute to successful contract operations.” RFP amend. 1 at 120.

Seventeen offerors submitted proposals in response to the RFP by the closing dates.³ The proposals included those of Kuhana-Spectrum, CasePro, Chesapeake, PPDG, and InGenesis. Kuhana-Spectrum’s proposal described itself as a joint venture between Kuhana Associates, LLC, a participant in the Small Business Administration’s (SBA) 8(a) program and Spectrum Healthcare Resources, Inc., a large business; and explained that the SBA approved a mentor-protégé agreement between the two firms in 2007. Agency Report (AR), Tab 5, Kuhana-Spectrum Proposal, Management Planning and Market Research Proposal, at 1. Spectrum is one of the four incumbent contractors currently performing the NMCP requirement.

Under the source selection plan, proposals were evaluated and assigned adjectival ratings under each non-price factor based on evaluated risks to the government.⁴ In performing the past performance evaluation, the agency considered the relevance, quantity and quality of each offeror’s first five references, contacted the listed references for feedback, and reviewed relevant information in the past performance information retrieval system (PPIRS) and other additional past performance information that was available to the NMLC and that was pertinent to the evaluation. For the management planning and market research evaluation, the NMLC considered the merits, including the strengths and weaknesses, of each offeror’s individual plan.

The four awardees submitted the four top ranked proposals.⁵ Kuhana-Spectrum’s proposal was ranked 6th out of the 17 proposals. The relevant evaluation results, by rank, are set forth below:

³ Past performance proposals were due on June 27 and the other proposal sections were due on July 11.

⁴ The possible ratings under the past performance factor were very low risk, low risk, moderate risk, substantial risk, and unknown risk. The possible ratings under the market planning and research factor were very low risk, low risk, moderate risk and substantial risk. AR, Tab 3, Source Selection Plan, at 14-15.

⁵ None of the awardees was an incumbent contractor.

| Offeror | Past Performance Rating | Management Plan and Market Research Rating | Total Price |
|----------------|--------------------------------|---|--------------------|
| Chesapeake | Low Risk ⁶ | Moderate Risk ⁷ | \$1,490,923 |
| PPDG | Low Risk | Moderate Risk | \$1,530,766 |
| CasePro | Low Risk | Low Risk ⁸ | \$1,510,725 |

⁶ A low risk past performance rating was defined as:

Good probability of successful performance. Some good quality Past Performance within the required time frames on services relevant (closely matched in numbers and disciplines) to those required by the solicitation. Responsive to requirements of the solicitation; any omissions are insignificant and do not create any risk if the proposal is accepted.

AR, Tab 3, Source Selection Plan, at 14-15.

⁷ A moderate risk management planning and market research rating was defined as:

Successful and unsuccessful performance are equally as probable. At least one major weakness, correctable through discussions. One or more of the following conditions exists with the proposal: offerors Management Planning and Market Research submission failed to fully demonstrate the capability and capacity to effectively accomplish solicitation requirements; failed to adequately demonstrate a knowledge of the marketplaces represented by the solicitation; failed to demonstrate/describe how the marketplace conditions will impact their ability to perform; and/or the offeror's risk mitigation plan is superficial in its evaluation (fails to adequately anticipate performance problems that may occur) or its mitigation (fails to provide adequate means or methods to overcome identified risks).

AR, Tab 3, Source Selection Plan, at 15.

⁸ A low risk management planning and market research rating was defined as:

Good probability of successful performance. Satisfactory; no major weaknesses. Offeror's Management Planning and Market Research submission generally demonstrates the capability and capacity to effectively accomplish solicitation requirements. The plan provides a generalized demonstration of the ability to complete all key performance functions and demonstrates a general knowledge of the marketplaces represented by the solicitation and the impacts the marketplace conditions will have on their ability to perform. The plan

(continued...)

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|-----------------|----------------------------|---------------|-------------|
| InGenesis | Low Risk | Moderate Risk | \$1,411,654 |
| Kuhana-Spectrum | Moderate Risk ⁹ | Moderate Risk | \$1,593,592 |

AR, Tab 8, Business Clearance Memorandum, at 25, 29-36.

In evaluating Kuhana-Spectrum’s past performance, the evaluators considered one reference from Kuhana Associates, two references from Kuhana Associates as a member of another joint venture with Spectrum as a subcontractor, and two references from Spectrum. The evaluators also considered the PPIRS information on Spectrum¹⁰ and Spectrum’s performance on other contracts, including its performance under the prior NMCP contract. In documenting the results of the evaluation, the evaluators recognized that there were no references for the Kuhana-Spectrum joint venture, but found that the combined efforts of Kuhana Associates and Spectrum demonstrated experience in all seven labor bands. The evaluators also recognized that the one reference for Kuhana Associates indicated that it would consider that firm for future work and that the reference for the Kuhana Associates joint venture contract indicated that the performance was satisfactory. However, the evaluators found that the PPIRS reports for Spectrum ranged from marginal to exceptional and included both positive and negative performance. The reports for several of the contracts stated that Spectrum had difficulty in filling positions,

(...continued)

provides a generalized evaluation of, and plan for mitigation of, performance risks perceived by the offeror.

AR, Tab 3, Source Selection Plan, at 15.

⁹ A moderate risk past performance rating was defined as:

Successful and unsuccessful performance are equally as probable. Some Past Performance on work similar to that required by the solicitation, but that experience is neither highly relevant (services closely matched) to that required by the solicitation (e.g., Past Performance for some but not all of the disciplines included in the solicitation requirements, or Past Performance in all disciplines but not in numbers closely matching the requirements of the solicitation) nor of demonstrably good quality. Responsive to most requirements of the solicitation; omissions create some risk of unrecognized performance problems.

AR, Tab 3, Source Selection Plan, at 15.

¹⁰ There was no PPIRS information available for Kuhana-Spectrum or Kuhana Associates.

especially in the area of providing back-up and replacement personnel for coverage positions; that it had invoicing issues; and that it had been the recipient of several contract discrepancy reports for failing to provide adequate back-up personnel. There was a 25-percent vacancy rate for Spectrum's incumbent NMCP contract for required positions. The NMLC also found that Spectrum had provided incomplete schedules for the majority of the missed shifts under the NMCP contract, which had a direct effect on the government's ability to provide patient care. The foregoing problems resulted in numerous contract discrepancy reports and the assessment of liquidated damages by the NMLC under the contract. The evaluators concluded that, based on the positive and negative reviews, both successful and unsuccessful performances were equally as probable, thus justifying a moderate risk rating. AR, Tab 7, Past Performance and Technical Evaluation Report, at 13-21.

In evaluating Kuhana-Spectrum's management planning and market research, the evaluators identified various strengths in the proposal, such as the local presence of the joint venture in Virginia Beach and a comprehensive discussion of credentialing and market research. The evaluators also found weaknesses in the proposal because the site manager had not been hired or named making it impossible for the evaluators to determine if the site manager would be qualified for the position; and that the proposal identified positions such as scheduler, employer relations specialists and credentialer, but failed to name the individuals who will hold these positions or their experience. The evaluators concluded that the lack of this information justified assigning the proposal a moderate risk rating under this factor. Id. at 98.

The source selection authority considered the merits of each of the 17 proposals, documented the various strengths and weaknesses of the proposals, and explained the basis for deciding to make four awards based on the top four proposals and not making award based on the remaining proposals, including Kuhana-Spectrum's. This protest followed.

Kuhana-Spectrum objects to the rating of its past performance as moderate risk, asserting that the evaluation was unreasonable and reflected unequal treatment when compared with how the agency evaluated the past performance record of the awardees. The protester maintains that the NMLC gave undue weight to its performance on the NMCP contract, and that in considering the deficiencies in its performance record the NMLC should have given more weight to the fact that Kuhana-Spectrum had received satisfactory or better ratings on 95 percent of its projects.¹¹ Kuhana-Spectrum argues that its few instances of marginal performance were not viewed in the proper context and if they were properly considered they

¹¹ The protester argues that its 95-percent successful performance record cannot reasonably be viewed as supporting a conclusion that successful and unsuccessful performance are equally probable, which is the definition of a moderate risk rating.

would not support a conclusion that it would be unable to succeed in a future contract. The protester argues that its past performance was actually stronger than that of the awardees because it received fewer marginal ratings, and that the awardees each should have received moderate risk ratings based on the performance problems found in their contract references.

As a general matter, the evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. In determining whether a particular evaluation conclusion is reasonable, we examine the record to determine whether the judgment was reasonable, adequately documented, and in accord with the solicitation's evaluation criteria. Marinette Marine Corp., B-400697 et al., Jan. 12, 2009, 2009 CPD ¶ 16 at 20.

As discussed above, the record here reflects that the NMLC reviewed the past performance information of the offerors' five references for relevancy, quantity and quality, as well as relevant PPIRS information, and any other available past performance information; contacted various references; documented the evaluation in detail; and explained the basis for its judgments of each offeror's past performance, including Kuhana-Spectrum's.

Contrary to Kuhana-Spectrum's contentions, the agency can reasonably give differing weight to an offeror's prior contracts based upon their similarity or relevance to the required effort. TPL, Inc., B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 12. Thus, the agency could reasonably give more weight to the documented instances of poor performance by Spectrum under the incumbent NMCP contract than the instances of good performance under less relevant contracts. See Del-Jen Int'l Corp., B-297960, May 5, 2006, 2006 CPD ¶ 81 at 8. While the protester states that medical positions are difficult to fill in the Portsmouth area, it does not dispute that Spectrum encountered problems associated with providing sufficient qualified health care personnel at the NMCP in accordance with the terms of the incumbent contract, which resulted in numerous contract discrepancy reports and the assessment of liquidated damages by the NMLC. The past performance record shows that this was a problem that Spectrum had encountered on a number of other contracts that were considered highly relevant because they involved the same labor bands as this RFP. Thus, the agency reasonably concluded that there was a significant risk concerning the protester's successful performance of the follow on contract here, so as to justify a moderate risk past performance rating, notwithstanding the numerous instances of successful contract performance by Spectrum and Kuhana reflected in the past performance evaluation record. The protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

While the protester notes that the record shows that the awardees had some similar performance problems on other contracts (including some where references indicated that they would not make another award to the firm), yet received low risk past performance ratings, not only were Spectrum's performance problems related to the incumbent and other very relevant contracts, the evaluation record demonstrates that the agency, in the exercise of its discretion, reasonably found that the protester generally had deficiencies greater in number and/or severity in the context of the demonstrated past performance than the deficiencies and weaknesses found in the awardees' past performance. Moreover, the past performance evaluation documentation shows that each of the awardees had significant positive ratings and feedback regarding their past performance. We have reviewed the protester's detailed disagreements with how the agency considered the various offerors' past performance and find that the agency's risk ratings, including the awardees' low risk ratings, were reasonable and supported by the record.

Kuhana-Spectrum also protests that the NMLC improperly downgraded its proposal for not providing the name and qualifications of the site manager, scheduler, employer relations specialist and credentialer. Kuhana-Spectrum contends that identifying these individuals and their qualifications was not required by the solicitation; rather the protester argues that the solicitation only required Kuhana-Spectrum to identify the corporate personnel who would be responsible for start up and the ongoing administration of the key functional areas. The protester asserts that since its proposal identified these individuals, the NMLC was not justified in downgrading its proposal for not identifying and discussing these other individuals.

The evaluation of proposals is primarily a matter within the contracting agency's discretion which we will not question unless we find the evaluation to be unreasonable or inconsistent with the RFP's evaluation factors. Centro Mgmt., Inc., B-249411.2, Dec. 2, 1992, 92-2 CPD ¶ 387 at 5. It is an offeror's responsibility to submit an adequately written proposal that establishes its capability and the merits of its proposed technical approach in accordance with the evaluation terms of the solicitation. See Verizon Fed., Inc., B-293527, Mar. 26, 2004, 2004 CPD ¶ 186 at 4. A protester's mere disagreement with the evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

Here, the RFP specifically required the offeror's management plan to provide a persuasive written discussion demonstrating its contract management capabilities, and to describe and discuss how the responsibilities, experience and qualifications of each individual, responsible for ongoing administration of the contract, would contribute to successful contract performance. The solicitation cautioned that the evaluators would not assume that the offeror possesses any capability or knowledge unless specified in the proposal. Given the solicitation's instruction that the plan should demonstrate the offeror's management capabilities, and discuss how the responsibilities, experience and qualifications of each individual will contribute to

successful contract performance, the Navy reasonably found, consistent with the terms of the solicitation, that Kuhana-Spectrum's failure to discuss the qualifications of individuals in its proposal was a weakness in its proposal.

In sum, we find the agency's evaluation of the proposals to be reasonable and consistent with the solicitation's evaluation scheme.

The protest is denied.

Daniel I. Gordon
Acting General Counsel