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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: American Medical Information Services

File: B-288627

Date: November 7, 2001

Stephen Jacob for the protester.
Phillipa L. Anderson, Esq., Dennis Foley, Esq., and Rheba Heggs, Esq., Department of Veterans Affairs, for the agency.
Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation gives undue weight to past performance because, in addition to past performance evaluation factor, certain non-price subfactors included under technical excellence and management factors concern past performance-related considerations, is denied; there is no limitation on weight agency can assign particular factors in evaluation.

DECISION

American Medical Information Services (AMEDIS) protests the terms of request for proposals (RFP) No. 504-01-021, issued by the Department of Veterans Affairs (VA) for medical transcription services at the VA Medical Center in Amarillo, Texas and six outpatient clinics in Texas, New Mexico and Kansas. AMEDIS contends that the RFP assigns undue weight to past performance-related evaluation considerations.

We deny the protest.

The RFP, issued July 20, 2001 as a total small business set-aside, provides for the award of an indefinite-delivery, indefinite-quantity contract for off-site transcription services for a base year, with four 1-year options. RFP at 1b. Evaluation is to be on a "best value" basis using the following factors, subfactors and weights:

(1) Past Performance 30%
- all contracts
- Government contracts

(2) Technical Excellence 30%
- error rate
- turn around time
- equipment

(3) Cost 25%

(4) Management 15%
- company experience
- personnel experience

RFP at 11. Proposals are to be rated under each factor on a scale of 1 (poor) to 5 (excellent) points. Id.

AMEDIS complains that the error rate and turn-around time subfactors under the technical excellence factor, and the company experience and personnel experience subfactors under the management factor are redundant of the past performance factor, and that this results in giving exaggerated importance to past performance in the evaluation and award decision.

This argument is without merit. While it is fundamental that offerors must be advised of the bases upon which their proposals will be evaluated, H.J. Group Ventures, Inc., B-246139, Feb. 19, 1992, 92-1 CPD ¶ 203 at 4, and that price must be considered, Federal Acquisition Regulation (FAR) § 15.304, there is no limitation on how much weight a particular factor can be accorded. Rather, the evaluation factors and significant subfactors that apply to an acquisition, and their relative importance, are within the broad discretion of the agency. Id. Here, the subfactors encompassed by each factor are specifically set forth in the solicitation, so that offerors are on clear notice of how the agency intends to evaluate their offers. Even if the protester is correct that the identified subfactors under the technical excellence and management factors relate to past performance, there simply is nothing improper in the resulting additional emphasis on past performance. The fact that it may be difficult for the protester to compete under such an evaluation scheme does not by itself render the scheme improper.

AMEDIS expresses concern that the listing of past performance-related considerations under other factors will enable VA to downgrade the firm based on its lack of relevant past performance, contrary to FAR § 15.503(a)(2)(iv), which provides that offerors without relevant past performance "may not be evaluated favorably or unfavorably on past performance." However, at this juncture proposals have not even been submitted, let alone evaluated, and nothing on the face of the solicitation suggests that VA intends to evaluate firms lacking relevant past performance other than in accordance with the FAR. We do note in this regard that it is our view that, regardless of the factor under which a past performance-related

subfactor is listed, agencies are prohibited from rating firms unfavorably under such subfactors on the basis that they lack relevant past performance.

The protest is denied.

Anthony H. Gamboa
General Counsel