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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Population Health Services, Inc.

File: B-292858

Date: December 1, 2003

William J. Murphy, Esq., for the protester.
Gena E. Cadieux, Esq., Paul R. Davis, Esq., and Janet Z. Barsy, Esq., Department of Energy, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency evaluated proposals in accordance with the evaluation criteria and reasonably downgraded the protester's proposal under the solicitation's experience sub-criterion where the sub-criterion provided for the evaluation of corporate as well as key personnel experience and the record reflects that the protester lacks corporate experience.

DECISION

Population Health Services, Inc. (PHS) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DE-RP06-03RL14383, issued by the Department of Energy (DOE), for occupational medical services. PHS argues that the agency's evaluation of its proposal was inconsistent with the terms of the solicitation and unreasonable.[1]

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[1] PHS also argued in its protest that the procurement was tainted by certain specific actions that the protester believed constituted violations of the Procurement Integrity Act, 41 U.S.C. § 423 (2000). The protester and agency subsequently informed our Office that the agency's Office of Inspector General is investigating the protester's allegations. In view of the Inspector General's investigation, we dismissed PHS's protest issues that are under investigation, noting that PHS may reinstate the protest regarding these issues upon completion of the investigation. See Oceaneering Int'l, Inc., B-278126; B-278126.2, Dec. 31, 1997, 98-1 CPD ¶ 133 1-2 n.1; Usatrex Int'l, Inc., B-231815.4, Oct. 31, 1988, 88-2 CPD ¶ 413 at 2.

We deny the protest.

The RFP was issued for occupational medical services to support the 11,000 personnel currently working on or near DOE's Hanford site. The Hanford site consists of 586 square miles of land in southeastern Washington, and for almost 50 years "was dedicated to plutonium production for the nation's nuclear arsenal." As a result of the plutonium production operations, Hanford has "become the nation's largest environmental cleanup project." Agency Report (AR) at 1.

The personnel working at Hanford are exposed to "chemical and radiological hazards, as well as more typical construction-related hazards." AR at 1-2. Given Hanford's history and the resultant health risks personnel are exposed to, the occupational medical program is, according to the agency, "an integral component of the Site's safety management system and is critical for maintaining the health and safety of Hanford employees." AR at 2. The medical services to be provided under this RFP include, among other things, medical monitoring and qualification examinations, diagnosis and treatment of injury or illness, employee counseling and health promotion, field/facility visits, records and case management, and emergency and disaster preparedness.

The RFP provided for the award of a performance-based, cost reimbursement service contract for 3 years. The contractor will be required to provide all personnel, facilities, equipment, materials, and supplies (with the exception of identified government resources) to perform the required occupational medical services. The RFP specified that "[t]he Contractor has the responsibility for total performance under this contract, including determining the specific methods for accomplishing the work effort, performing quality control, and assuming accountability for accomplishing the work under the contract." RFP § C.2.

Award of the contract was to be made to the offeror submitting the proposal determined to represent the best value to the agency based upon the evaluation criteria of technical/management and cost. The RFP provided that the technical/management criterion was comprised of the following six sub-criteria, listed in descending order of importance: experience; medical approach; past performance; organization, controls, and systems; small business; and transition plan. The solicitation also informed offerors that in determining best value, the technical/management criterion would be of significantly greater importance than cost/fee.

The agency received a number of proposals, including PHS's, by the RFP's closing date.[2] The SEB found that PHS's proposal contained significant weaknesses under

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[2] Our discussion in this decision is necessarily general because a protective order was not issued in connection with this protest.

the most heavily weighted evaluation sub-criterion of experience, in that PHS was "a new-start corporate entity, not teamed with any other entity" and had "no previous relevant corporate experience." AR, Tab B, Source Evaluation Board (SEB) Report, at 21. The SEB also found PHS's proposal deficient under the experience evaluation sub-criterion because the individual proposed for the key position of clinical director lacked the required minimum experience. Id. at 23. The agency also evaluated PHS's proposal as having a significant weakness under the next most important evaluation sub-criterion of medical approach, given the SEB's determination that the proposal evidenced weaknesses in 12 of the 15 evaluation elements comprising the medical approach sub-criterion. AR, Tab B, SEB Report, at 7. The SEB ultimately determined that PHS's proposal should be excluded from the competitive range because the proposal's evaluated point score of 291 out of 1,000 total points was significantly lower than the next-lowest proposal's point score of more than 650 points, and because PHS's proposed and evaluated costs were, respectively, the highest and second highest of the proposals received. Id. at 6. After requesting and receiving a debriefing, PHS filed this protest.

PHS argues that the agency's evaluation of its proposal was unreasonable and inconsistent with the evaluation criteria set forth in the solicitation. The protester contends that, but for the agency's improper evaluation, its proposal would have been evaluated as high as the proposals included in the competitive range.

In reviewing an agency's decision to exclude a proposal from the competitive range, we look first to the agency's evaluation of proposals to determine whether the evaluation had a reasonable basis. Although in reviewing an agency's evaluation we will not independently determine the merits of a proposal, we will examine the record to ensure that the evaluation was reasonable and consistent with the evaluation criteria. The judgments in an evaluation of proposals are subjective by nature; nonetheless, the judgments must be reasonable and must bear a rational relationship to the announced criteria upon which the competing offers are selected. Essex Electro Eng'rs, Inc., B-281149, B-284149.2, Feb. 28, 2000, 2000 CPD ¶ 72 at 6.

PHS protests that the agency's evaluation of its proposal under the most heavily weighted experience sub-criterion was inconsistent with the terms of the RFP. Specifically, the protester contends that the agency's evaluation of proposals was improper in this regard because it "separately evaluated and scored without any disclosure in the RFP" the protester's "corporate experience and key personnel experience." Protester's Comments at 5. The protester adds that it was unaware from the solicitation that corporate experience would receive the weight accorded to it by the agency in its evaluation of proposals, given that the RFP's description of the experience evaluation sub-criterion appeared, in the protester's view, to be oriented more towards an evaluation of proposed key personnel.

The experience sub-criterion was set forth in the RFP (at § M.3b) as follows:

> The offer will be evaluated on the extent and relevance of the Offeror's corporate experience and experience of the key personnel in providing occupational medical services . . . . This criterion addresses *what* the contractor and key personnel have done relative to the requirements of this solicitation.

The experience sub-criterion next informed offerors that "DOE will evaluate each Offeror's key personnel through review of written resumes," and described the type of information that resumes should include. The experience sub-criterion concluded with a paragraph directed towards the evaluation of the offerors' corporate experience, providing that "[i]n the case of a newly formed joint venture, partnership, or other business entity formed for the purpose of competing for this contract, DOE will evaluate the experience of the entities that comprise the newly formed entity." RFP § M.3b.

Proposals were evaluated on a 1,000-point scale under the technical/ management criterion, and the experience sub-criterion was evaluated on a 350-point scale. AR, Tab B, Source Evaluation Board (SEB) Report, at 6. The record reflects that the agency, in evaluating the proposals, allotted 200 of these 350 points to its evaluation of corporate experience, and 150 points to its evaluation of key personnel. The agency found in reviewing PHS's proposal that PHS, as "a new-start corporate entity," did not have "previous relevant corporate experience." Id. at 21. In light of this finding (which the protester does not dispute), PHS's proposal received 0 of the 200 possible points for corporate experience.

As set forth above, the experience sub-criterion provided for the evaluation of the offerors' "corporate experience and the experience of the key personnel." RFP § M.3.b.1. Accordingly, the agency's separate consideration and scoring of an offeror's corporate and key personnel experience was consistent with the RFP's experience sub-criterion. Additionally, and contrary to the protester's view, the solicitation does not indicate or otherwise provide that an offeror's lack of corporate experience would be ignored or could be offset to the degree advocated by the protester should the offeror's key personnel's experience be favorably evaluated.

We disagree with the protester's assertion that key personnel experience should be given more weight than corporate experience. In this regard, we do not think that the fact that more words were devoted to key personnel experience than corporate experience indicates that key personnel experience should be more heavily weighted or that the RFP when read as whole implies such greater weight would be assigned to key personnel experience. However, even assuming that corporate experience should not have been given more weight than, but should be given the same weight as, key personnel experience, PHS

was not prejudiced. Competitive prejudice is an essential element of every viable protest. Diverco, Inc., B-259734, Apr. 21, 1995, 95-1 CPD ¶ 225 at 4. Here, the agency has provided a detailed explanation (which the protester does not dispute) demonstrating that an equal weighting of corporate and key personnel experience during the point scoring of proposals would have increased PHS's proposal's rating under the experience sub-criterion and overall by only 5.42 out of 1,000 points. AR at 10-12.

PHS also argues that the agency's evaluation of its proposed clinic director under the experience sub-criterion, and of its proposal under the medical approach sub-criterion, was unreasonable. Specifically, the protester contends that the agency determination that PHS's proposed clinic director failed to meet the minimum requirements for that position as set forth in the solicitation, and scoring of 0 out of 45 available points because of this, and that PHS's proposed medical approach constituted a significant weakness to the extent that PHS's proposal received 0 out of 250 points under the medical approach sub-criterion, were unreasonable.

Here too, PHS was not prejudiced by this evaluation. Even if PHS's proposed clinic director had received all of the 45 points available for that position under the experience sub-criterion, and PHS's proposal had received a perfect score of 250 points under the medical approach sub-criterion, its total score would be 599 points, still significantly lower than the score of the lowest-rated proposal in the competitive range (which also had a lower cost).[3] Given this, and that the protester does not claim, and the record does not indicate, that there is any reasonable possibility that PHS's proposal should have received perfect scores here, as well as the facts that PHS's proposed cost was the highest of the proposals received and its evaluated costs were also relatively high, we see no reasonable possibility that the protester was prejudiced by the agency's allegedly unreasonable evaluation of its proposal in these areas. Consolidated Eng'g Servs., Inc., B-277273, Sept. 24, 1997, 97-2 CPD ¶ 86 at 4; Agriculture Tech. Partners, B-272978, B-272978.2, Dec. 5, 1996, 96-2 CPD ¶ 226 at 5 n.5. In sum, we find no basis to challenge the elimination of PHS's proposal from the competitive range.

The protest is denied.

Anthony H. Gamboa
General Counsel

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[3] This analysis also assumes that corporate and key personnel experience should have been weighted equally by the agency in its evaluation of proposals.