



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Saratoga Medical Center, Inc.

File: B-281350; B-281350.2

Date: January 27, 1999

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Gary S. Pitchlynn, Esq., Pitchlynn, Morse, Ritter & Morse, for Choctaw Management/Services Enterprise, an intervenor.
Clarence D. Long III, Esq., and Captain David A. Whiteford, Department of the Air Force, for the agency.
Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably evaluated awardee's proposal as posing a low performance risk based upon favorable reference information received concerning performance under relevant contracts.
2. Allegation that agency misevaluated awardee's proposal with respect to past performance is denied where the record shows that the evaluation was reasonable and in accordance with the applicable stated evaluation factors.
3. Determination to select lowest-priced, technically acceptable proposal for award of contract, and determination that the awardee's prices were realistic are unobjectionable where both determinations were made in a manner consistent with the evaluation criteria, and the awardee's professional compensation plan and base salaries (which were higher than the protester's) reasonably were deemed adequate to recruit and retain employees.

DECISION

Saratoga Medical Center, Inc. protests the award of a contract to Choctaw Management/Services Enterprise under request for proposals (RFP) No. F41622-98-R-0014, a competitive small disadvantaged business set-aside, issued by the Department of the Air Force to acquire clinical social services under the Family Advocacy Program (FAP) for Air Force personnel and their families at various locations in Europe, the Azores and Turkey. Saratoga principally asserts that the agency misevaluated Choctaw's past performance as warranting a low performance

risk rating and also questions the agency's determination that the awardee's proposed price is realistic.

We deny the protests.

The RFP, issued on May 6, 1998, called for offerors to provide Family Advocacy Clinical Directors, Family Advocacy Treatment Managers, Family Advocacy Outreach Managers, Family Advocacy Nurse Specialists, and Family Advocacy Program Assistants, as needed, specifying estimated quantities and locations for military bases in Europe, the Azores and Turkey. RFP § B. The RFP contemplated the award of a fixed-price, indefinite-quantity contract for a base year with four 1-year ordering period options and stated that the agency would employ performance/price tradeoff techniques to make a best value award decision. RFP § M.4.a. The RFP went on to state that, if the technically acceptable offeror submitting the proposal with the lowest evaluated price received a low performance risk rating and was found responsible, that proposal would represent the "best value." RFP § M.4.b.4. The RFP provided that award could be made to other than the offeror that submitted the low-priced, technically acceptable proposal if that offeror was "judged to have a moderate, high or not applicable performance risk rating." RFP § M.4.b.5. Concerning past performance, the RFP stated that a performance risk assessment would be conducted and required offerors to submit information on relevant contracts performed within the last 3 years which demonstrate their ability to perform the proposed effort.¹ RFP § L.901, Vol. IIIa. The RFP further provided for an evaluation of the price proposals for realism. RFP § M.2.

On June 8, 1998, the agency received six proposals. Between June 11 and 15, offerors gave oral presentations of their technical proposals. The proposal of one offeror did not address the minimum technical requirements and was rejected. All other proposals were determined to be technically acceptable. Clarification requests were issued to the offerors that had submitted acceptable proposals and they were instructed to address the clarification requests along with amendment No. 0005, issued August 12, which added a contract line item for the travel lodging allowance and for overseas employee taxes. Final proposal revisions were received on August 21. The final evaluation of offers was as follows:

¹Section M of the RFP stated that the purpose of the past performance evaluation was to identify and review relevant present and past performance and provided that past and present performance information would be obtained through the use of simplified questionnaires or telephone interviews and using data independently obtained from other government and commercial sources. RFP § M.3.

<u>OFFEROR</u>	<u>TECHNICAL</u>	<u>PRICE</u>	<u>PERFORMANCE RISK</u>
Choctaw	Acceptable	[deleted]	Low
A	Acceptable	[deleted]	Low
Saratoga	Acceptable	[deleted]	Low
B	Acceptable	[deleted]	Low
C	Acceptable	[deleted]	Low

Contracting Officer's Statement of Facts at 2.

The final proposals submitted by offerors A and C were subsequently rejected. On September 15, award was made to Choctaw on the basis that it submitted the lowest priced technically acceptable proposal with a low performance risk, and these protests followed.

Saratoga's first complaint is that the agency unreasonably assigned Choctaw a low past performance risk rating despite Choctaw's being a new company with only 6 months of experience in providing services comparable to those being sought here. Saratoga also maintains that the information the agency relied on was contradictory and questions the relevance of the awardee's references.

We review an agency's evaluation of proposals to ensure that it is fair, reasonable, and consistent with the evaluation criteria stated in the solicitation. Wind Gap Knitwear, Inc., B-261045, June 20, 1995, 95-2 CPD ¶ 124 at 3. Where a solicitation requires the evaluation of offerors' past performance, an agency has discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. Federal Envtl. Servs., Inc., B-250135.4, May 24, 1993, 93-1 CPD ¶ 398 at 12.

Here, Choctaw's proposal was assigned a low performance risk rating based on its performance on two contracts that the agency concluded were relevant, including a current Air Force Family Advocacy Program contract. The references contacted for Choctaw responded to the agency's questionnaire and provided information which the agency found sufficient to conclude that Choctaw was capable of performing this requirement. Both references unequivocally stated that given what was known about Choctaw's ability to execute what it promised in its proposal, they definitely would award to Choctaw again if given the choice. Agency Report, Tab 8. Saratoga was assigned a low performance risk rating based on its performance on three relevant contracts, including a current Air Force Family Advocacy Program contract. [Deleted].

Notwithstanding Saratoga's assertions to the contrary, we see nothing unreasonable in the Air Force's manner of assessing the past performance history of the offerors, nor do we see any reason to question the agency's conclusion, based on that

investigation, that both offerors presented a low risk of nonperformance. While Saratoga challenges the agency's past performance evaluation because the agency did not contact every reference listed by Choctaw, there is no requirement that an agency contact all of an offeror's references, Dragon Servs., Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151 at 8, nor is there any requirement that an agency contact the same number of references for each offeror. IGIT, Inc., B-275299.2, June 23, 1997, 97-2 CPD ¶ 7 at 6.

While Saratoga believes that its references were more relevant than Choctaw's, and better demonstrated its ability to perform, the RFP stated that the purpose of performing the past performance risk assessment was to identify and review relevant present and past performance and then to make an overall risk assessment of an offeror's ability to perform the requirement. RFP § M.3.c. The RFP did not place any premium on the possession of a greater number of the kinds of references that Choctaw points to, and the record provides a basis for the evaluators reasonably to conclude that both offerors' past performance records warranted the conclusion that each demonstrated an ability to successfully perform the requirement.

Saratoga next argues that the agency conducted an improper performance/price tradeoff by changing the basis for award from best value to one based on low price. In this regard, Saratoga also essentially contends that the agency's failure to properly evaluate the realism of Choctaw's proposed prices resulted in a flawed source selection decision.

With respect to Saratoga's argument that the agency changed the basis for award from best value to one based on low price, the RFP, as outlined above, stated that the agency would make a "best value award," which the RFP went on to specify meant selection of the offeror submitting the lowest-priced, technically acceptable proposal if it also received a low performance risk rating. The RFP provided for a performance/price tradeoff only if the offeror submitting the lowest-priced, technically acceptable proposal was judged to have a moderate, high or inapplicable performance risk rating. Here, the lowest-priced, technically acceptable proposal also received a low performance risk rating and in accordance with the RFP represented the best value to the government. Accordingly, the award to Choctaw was consistent with the RFP award criteria.

With respect to Saratoga's argument that the agency did not perform a proper price realism analysis, where, as here, the award of a fixed-price contract is contemplated, a proposal's price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. HSG-SKE, B-274769, B-274769.3, Jan. 6, 1997, 97-1 CPD ¶ 20 at 5. However, since the risk of poor performance when a contractor is forced to provide services at little or no profit is a legitimate concern in evaluating proposals, an agency in its discretion may, as here, provide for a price

realism analysis in the solicitation of fixed-price proposals. Volmar Constr., Inc., B-272188.2, Sept. 18, 1996, 96-2 CPD ¶ 119 at 5. The Federal Acquisition Regulation (FAR) provides a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including a comparison of the prices received with each other, FAR § 15.404-1(b)(2)(i); with previous contract prices for the same or similar services; FAR § 15.404-1(b)(2)(ii); and with an independent government cost estimate, FAR § 15.404-1(b)(2)(v). The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. Ameriko-OMSERV, B-252879.5, Dec. 5, 1994, 94-2 CPD ¶ 219 at 4; Ogden Gov't Servs., B-253794.2, Dec. 27, 1993, 93-2 CPD ¶ 339 at 7.

Here, the RFP stated that price proposals would be evaluated for realism, reasonableness and completeness, and provided that the evaluators would consider the reasonableness of the proposed price versus proposed staffing. RFP § M.2. The RFP further stated that there should be a clear and concise correlation between the offeror's ability to meet the requirements and the offeror's technical information to support a positive determination as to the realism, reasonableness, and completeness of the offeror's price. Id. For the price realism analysis, the RFP stated that evaluators would assess the compatibility of the proposed price with the proposal scope and efforts, the list of estimating ground rules and assumptions, and the schedule duration. To determine reasonableness, evaluators were to determine that (1) the offeror's estimates are based on factual, verifiable data and the estimating methodology employed is sound under current market conditions, (2) the estimated costs are most likely to be incurred by the offeror in the performance of the contract, and (3) the estimated total cost and profit are reasonable to the seller and reasonable to the buyer. For an offer to be determined complete, the RFP stated that the offeror must provide all the data necessary to support the offer. Id.

The record in this case shows that to assess realism, the offerors' prices were compared against the RFP requirements to ensure that all areas of the acquisition were reflected in the proposal. Agency Report, Tab 10a. For completeness, each proposal was compared against the RFP to ensure compliance and the proposals were also compared against the requirements in the RFP to verify that all areas were addressed. For reasonableness, offerors' assumptions, proposed profit rates, contract summary information, and explanations of plans to handle foreign taxes were evaluated.²

²The agency reports that award would have been made on initial proposals had it not been for a change in the Status of Force Agreement which involved a tax issue for certain labor categories whose incomes may be subject to taxation by German tax authorities. Consequently, an amendment was issued that added a cost reimbursable line item for the taxes, and revised proposals were requested.

Choctaw initially provided a primary proposal that included an allowance for foreign taxes and an alternate proposal that assumed the labor categories in question would receive exemption from taxes. A clarification request (CR) was issued which required Choctaw to submit a single proposal conforming to amendment No. 0005. Choctaw also made certain assumptions the evaluators determined had to be resolved before price realism could be determined. Choctaw, in its revised proposal, addressed the CRs pertaining to its assumptions that the Air Force would continue to provide the same level of support to the Program Management Office as provided in the current contract by withdrawing the assumption and including the costs for housing the office and providing support to conduct all required business in the Program Management Contract Line Item or Overhead at no further cost to the government. The evaluators concluded that Choctaw's revised proposal adequately addressed the evaluators' concerns and adequately addressed amendment No. 0005. In its revised proposal, Choctaw's employee compensation remained the same as the original proposal, overhead was reduced from 11 percent to 10 percent and the profit rate was reduced from 7.5 percent to 7 percent due to an expanded business base. The evaluators concluded that Choctaw's employee compensation plan and base salaries were adequate to recruit and retain employees and therefore met the price realism criteria. A comparison of the proposed professional compensation of Saratoga and Choctaw showed that the Choctaw's professional compensation and total compensation were actually higher than Saratoga's.

Saratoga objects to the price realism analysis arguing that it did not follow the RFP stated evaluation plan and objects to the fact that the base salary comparison was allegedly made after contract award. However, as explained above, the agency performed a detailed price evaluation consistent with the RFP plan, as a result of which the agency concluded that Choctaw's prices were reasonable. Based on the record before us, we have no basis to object to the reasonableness of this determination. As noted above, in a fixed-price solicitation the extent of a price realism analysis is left to the discretion of the agency. In response to Saratoga's allegation that the base salary comparisons were made after award, the Air Force reports that the November 4, 1998 memorandum (Agency Report, Tab 9a) was prepared to explain how the standards for minimum salaries were determined, but that the spreadsheet was prepared concurrently with the evaluation of proposals. Contracting Officer Statement of Facts in Response to Protester's Comments. The record shows that Choctaw's proposed compensation was consistent with prior contracts. Moreover, the record also shows that Choctaw's professional compensation plan is actually higher than Saratoga's. In sum, there is no merit to Saratoga's allegation that the agency failed to properly evaluate Choctaw's employee compensation plan.

Saratoga also argues that Choctaw's proposal contains assumptions and qualifications that are inconsistent with the solicitation. Specifically, Saratoga states that Choctaw in its proposal assumed that: (1) the agency would not object to

relocation of the Program Management Office to another country in order to obtain more beneficial tax treatment for Choctaw; (2) the agency would continue providing office space and utilities, telephone access, and incidental support to Choctaw employees managing the program; (3) the incumbent contractor would have the responsibility of recruiting for vacant positions between the date of contract award and the beginning of performance by the awardee; (4) pending hires would be identified to Choctaw for final hiring determinations; (5) the incumbent contractor would cooperate with Choctaw in providing certain information allegedly known only to the incumbent; (6) the successful offeror would not be required to provide replacement staffing; and (7) certain preferences would be afforded in the credentialing process. Saratoga also contends that Choctaw further qualified its response to the RFP by offering a reduced price proposal, conditioned upon the elimination of Choctaw's liability for taxes in Germany, as well as Choctaw's right to request equitable adjustments from the agency to cover the costs of establishing an office in Europe and any tax liabilities incurred by Choctaw employees that were not foreseen at the time it submitted its proposal.

In fact, the only assumptions Choctaw made in its initial proposal that were not consistent with the RFP and that affected its proposed price related to the tax issue and the continued government support of the Program Management Office. These concerns were brought to Choctaw's attention and, in its revised proposal, Choctaw adequately responded to the tax issue and withdrew its assumptions concerning the government's level of support to the Program Management Office, stating that the costs for housing the office and providing support to conduct all required business were included and itemized in the Program Management contract line item or would be provided from overhead at no further cost to the government. The record shows that the other assumptions were either required by the existing contract or simply restated what was required under this solicitation and did not affect the price, quantity, quality or delivery of the services. For example, the requirement that the incumbent contractor provide credential files on privileged employee to the new contractor and provide proof in writing of the primary source of verification of employee credentials appears in the solicitation at RFP § C.1.8.6. Similarly, the solicitation contains a requirement that the contractor shall ensure sufficient staffing for full coverage throughout the term of the contract. RFP § C.1.6. In short, Choctaw's final proposal did not contain any material qualifications and Saratoga's allegations in this regard are factually misplaced.

The protests are denied.

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