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Decision

Matter of: Gray Personnel Services, Inc.

File: B-285002; B-285002.2

Date: June 26, 2000

Andrew P. Hallowell, Esq., and Antonio R. Franco, Esq., Piliero, Mazza & Pargament, for the protester.

Cpt. David J. Goetz and Col. Nicholas P. Retson, Department of the Army, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's past performance evaluation is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's evaluation scheme.

DECISION

Gray Personnel Services, Inc. protests the Army's award of a contract to RGB Group, Inc. pursuant to request for proposals (RFP) No. DADA15-99-R-0023. The protester alleges that the Army misevaluated proposals on past performance.

We deny the protest.

Issued on August 16, 1999, by the Walter Reed Army Medical Center (WRAMC), the RFP solicited offerors for providing health care services at Kimbrough Ambulatory Care Center, Fort Meade, Maryland, and at two other locations. RFP amend. 2, § C.1. The RFP contemplated award of an indefinite-quantity contract (for a basic period of 6 months, with options for 4 additional years), under which the contractor would provide, on the basis of fixed per-hour prices, the health care services of a number of different types of health care professionals. RFP at 47; RFP amend. 2, at 2-54.

The RFP stated that the contract would be awarded to the offeror whose offer was the most advantageous to the government after consideration of price and other factors. RFP at 49. The RFP stated that proposals would be evaluated on three factors: past performance, technical (including contract administration and

recruiting qualified personnel subfactors), and price. Id. The RFP explained that past performance was significantly more important than technical and that the two technical subfactors were equal in importance and, when combined, were more important than price. Id. The RFP advised that it was highly likely that the contract would be awarded on the basis of initial proposals. RFP amend. 2, at 1.

Concerning past performance, offerors were required to submit information, including references, on contracts performed within the past 3 years, which were similar in scope and complexity to the present requirement. The RFP stated that past performance would be evaluated on the offeror's ability to comply with contract terms and conditions, provide quality service/personnel, maintain schedules, and exercise management control. RFP at 45. The RFP stated that past performance would not be numerically rated, but would be evaluated for risk (i.e., probability of success) and briefly defined the three possible ratings (i.e., "high," "medium," or "low" risk) that the agency would assign a proposal after evaluating an offeror's past performance. Id. at 49-50.

[Deleted] offers were received and evaluated, and [deleted] were found technically acceptable. The evaluations of RGB's and Gray's proposals are summarized as follows:

Offeror	Past Performance (Risk)	Technical Score/ Qualitative Rating	Total Price
RGB	Low	[deleted]	\$14,932,722
Gray	Medium	[deleted]	\$(deleted)

Agency Report, Tab K, Negotiation Memorandum, at 8. Based upon RGB's low past performance risk, [deleted] technical rating, and lowest total price, the contracting officer determined that it was in the best interest of the government to award the contract, without conducting discussions, to RGB. Id. at 8-10. Accordingly, the contract was awarded to RGB. After a debriefing, Gray protested.

The protester contends that it was unreasonably downgraded on past performance based solely upon a negative comment made by a WRAMC contract administrator concerning Gray's low "fill rate"--i.e., ability to provide nursing staff when requested--under a prior contract. Gray asserts that there is nothing in the instant RFP that states that "fill rates" under prior contracts will be evaluated. Gray also asserts that there was a [deleted] in the Washington, D.C. area; that the number [deleted] that it was required to provide had [deleted] over the life of that contract; and that it was unable to provide [deleted] as requested by WRAMC. Thus, Gray contends that its "fill rate" was excellent "under the circumstances," and therefore it should have been given a better risk rating on the past performance evaluation. Protest at 4.

It is not the function of our Office to evaluate past performance information de novo. Rather, we will examine an agency's evaluation only to ensure that it was reasonable

and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of offerors' past performance information is primarily a matter within the contracting agency's discretion. Pacific Ship Repair and Fabrication, Inc., B-279793, July 23, 1998, 98-2 CPD ¶ 29 at 3-4. Agencies are required to evaluate proposals consistent with the RFP's stated evaluation criteria, including considerations reasonably and logically encompassed by the stated factors. F2M-WSCI, B-278281, Jan. 14, 1998, 98-1 CPD ¶ 16 at 7.

Consideration of Gray's "fill rate" under a prior contract was consistent with the RFP. The basic requirement of the instant RFP is for the contractor to provide qualified health care professionals for routine work schedules, as well as for additions to and surges in work requirements as required under delivery orders, and to provide competent substitutes as needed. RFP amend. 2, §§ C.1, C.2. As noted above, the RFP specifically stated that the agency would consider an offeror's ability to provide quality service/personnel and to maintain schedules as part of the past performance evaluation. RFP at 45. Moreover, in defining each of the three risk ratings that the agency might give offerors, the RFP specifically referred to the offerors' meeting schedules, ability to provide requested services, and meeting contract requirements.¹ RFP at 49-50. Clearly, consideration of Gray's ability to provide nursing staff when requested under a prior contract was encompassed within the RFP's evaluation scheme.

In evaluating Gray's past performance, the contracting officer considered questionnaires on three prior contracts listed in Gray's proposal. With one exception, discussed below, the questionnaires were generally favorable to Gray. The contracting officer also considered a fourth "highly favorable report" that the agency had in its files, even though that contract was not listed in Gray's proposal. Contracting Officer's Supplemental Statement at 3; Agency Report, Tab H, Past Performance Information (Gray), at 1-9. Since the "medium risk" rating assigned to Gray is primarily attributable to a prior contract Gray had with WRAMC for providing licensed practical nurses to the hospital's intensive care unit (ICU), we will briefly discuss the record of Gray's performance under the WRAMC contract and the conclusions the contracting officer drew from it.

¹ For example, the RFP defined "medium risk", the rating given Gray's offer, as:

Equates to a reasonable expectation of success. Verification of Past Performance shows that offeror occasionally has not met work schedules or other obligations, on occasion has been unable to provide requested services, or met contract terms with only a few reported failures

RFP at 50.

The administering contracting officer (ACO) for the WRAMC contract gave Gray a “[deleted]” rating of [deleted] for “adherence to scheduling requirements” and he commented that Gray’s fill rate for [deleted] had been poor.² Contracting Officer’s Statement at 4. The contracting officer also was aware that the ACO for the WRAMC contract had sent two letters of concern (one each in the [deleted]) to Gray, about Gray’s low fill rate. Contracting Officer’s Supplemental Statement at 4, 5. In the summer of 1999, the WRAMC ACO wrote to Gray, stating:

[deleted]

Agency Report, Tab I, Letter from ACO to Gray 1 (Aug. 25, 1999). Four months later, the WRAMC ACO again wrote to Gray, stating: “Based on the above fill rate, I feel Gray Personnel is [deleted] of the above contract.” Agency Report, Tab I, Letter from ACO to Gray 1 (Dec. 21, 1999).

Based upon the negative comments in the ACO’s past performance questionnaire and letters regarding Gray’s performance on the WRAMC contract, the contracting officer reasonably concluded that Gray had exhibited problems meeting scheduling requirements.³ Agency Report, Tab K, Negotiation Memorandum, at 3. In this regard, the contracting officer states her belief that Gray’s past performance problems under the WRAMC contract were significant, especially since they occurred in two separate time periods. Contracting Officer’s Supplemental Statement at 4, 5. Gray concedes that there were times when it was unable to [deleted] as requested by WRAMC but argues that there were extenuating circumstances. Protest at 4. In these circumstances, Gray’s past performance would appear to fall squarely within the RFP’s definition of “medium risk,” quoted above, since Gray occasionally was unable to provide the requested [deleted] services and had had a few reported failures in meeting the terms of the WRAMC contract. Accordingly, we find that the contracting officer reasonably determined that Gray’s past performance merited a “medium risk rating.”

² The questionnaire asked references to rate the contractor on a scale of 1 to 5 in several areas, indicating that a “5” represented superior performance while a “1” represented unacceptable performance. See, e.g., Agency Report, Tab H, Past Performance Information (Gray), at 1.

³ In drawing this conclusion, the contracting officer also noted that, in a questionnaire submitted on another contract listed as a reference in Gray’s proposal, Gray received only a “[deleted]” rating of [deleted] for “adherence to scheduling requirements.” Agency Report, Tab K, Negotiation Memorandum, at 3; Contracting Officer’s Statement at 5.

Gray also contends that RGB was rated unreasonably high (i.e., low risk) on past performance, because RGB has very little experience in providing on-site health care services and has not performed any work of the same scope and complexity as the instant requirement. Protest at 5. Gray states that, with the exception of one contract for providing dentists, RGB has never contracted to provide more than two physicians or nurses. Supplemental Protest at 2. After reviewing the record, we find that the contracting officer reasonably evaluated RGB's past performance.

RGB's proposal listed 14 prior contracts and included a brief description of each, including, among other things, the type of services and the number and type of workers that RGB provided under each. RGB Proposal, vol. II, Past and Present Performance, at 1-15. RGB's proposal also included more than 40 quality assessment reports (signed by government officials) that were apparently completed at RGB's request and then submitted to RGB. Contracting Officer's Supplemental Statement at 8. Some of the quality assessment reports were evaluations of the performance of RGB's management, while others were evaluations of the performance of personnel RGB had provided under various contracts. RGB Proposal, vol. III, Technical/Management, attachs. F, F1.

In her past performance evaluation, the contracting officer considered all of the information included in RGB's proposal, information received from other government officials in response to questionnaires sent out by the contracting officer, and relevant information that the contracting agency had in its files.⁴ Contracting Officer's Statement at 6; Contracting Officer's Supplemental Statement at 3. The contracting officer's evaluation focused on 4 of the 14 contracts listed in RGB's proposal. Contracting Officer's Supplemental Statement at 3. For one of these contracts, the contracting officer reviewed a completed past performance

⁴ Gray also contends that the agency improperly considered management quality assessments and individual employee performance reviews that were included in RGB's proposal "without verification." Supplemental Protest at 2, 8. However, the RFP did not state that the agency would evaluate only information obtained directly from references listed in the proposals, it contained no restriction on the type of past performance information that could be included in offers and evaluated by the agency, and it did not state that all past performance information submitted by the offeror or received from other sources had to be verified. Federal Acquisition Regulation § 15.305(a)(2)(ii) specifically states that agencies shall evaluate past performance information obtained from other sources than the protester and that the source selection authority shall determine the relevance of similar past performance information. The agency points out that the management quality assessments and employee evaluations were completed and signed by cognizant government contracting officials. Supplemental Agency Report at 3. Therefore, we think that the contracting officer reasonably considered the additional information. See TEAM Support Servs., Inc., B-279379.2, June 22, 1998, 98-1 CPD ¶ 167 at 4-5.

questionnaire that the contracting officer had sent to and had received back from the contracting activity (the Kimbrough Ambulatory Care Center at Fort Meade). On another contract, the contracting officer reviewed a past performance evaluation that had been completed by a United States Coast Guard contracting official and which was included in RGB's proposal. On a third contract, the contracting officer relied upon a past performance evaluation that was already in her files since it had been completed and submitted by a Defense Logistics Agency official in an earlier procurement. For the fourth contract, the contracting officer reviewed information contained in RGB's proposal, including a large number of quality assessment reports on RGB management and the personnel that RGB had provided to various government agencies under a health care provider services contract with the Army's MEDCOM contracting center, because the contracting officer did not receive a response to the questionnaire she had sent to MEDCOM. Contracting Officer's Supplemental Statement at 3, 5-8.

After reviewing all the above-described past performance information, the contracting officer determined that RGB deserved a "low risk" past performance rating.⁵ Specifically, in deciding upon this rating the contracting officer considered the fact that past performance questionnaires received for RGB's prior contracts gave RGB ratings ranging from "highly acceptable" to "superior" and indicated that RGB met the definition of low risk performance. The contracting officer also considered the information provided in RGB's proposal, including management quality assessments and employee evaluations completed by government officials, regarding a dental services contract worth \$26 million under which RGB provided approximately 24 full-time dentists, 27 part-time dentists, 50 full-time dental assistants, and 23 part-time dental assistants to Air Force facilities throughout the United States. The contracting officer states that she determined that the dental services contract was similar in scope to the present requirement because the dental services contract included the complex tasks unique to providing health care personnel, including determining qualifications, maintaining current licenses and certifications, and providing qualified replacement personnel. Contracting Officer's Supplemental Statement at 7, 8. According to the contracting officer, after reviewing these reports and evaluations of RGB's performance under other contracts, she determined that RGB consistently complied with contract terms and conditions, provided quality service and personnel, maintained schedules, and exercised management control. Contracting Officer's Statement at 6-7.

⁵ The RFP defined "low risk" as:

Equates to a substantial probability of success. Verification of Past Performance shows that offeror consistently meets work schedules, provides specified services, meets contract terms without failure

RFP at 50.

Based upon the above record, we think that the contracting officer reasonably concluded that RGB had a record of relevant past performance providing services that were similar in nature and requiring the same abilities that would be required to perform the present contract--that is, providing services from a number of different types of health care professionals. Contracting Officer's Supplemental Statement at 9. Our review of the past performance record finds that it is replete with very positive comments concerning RGB's past performance and, therefore, confirms the reasonableness of the contracting officer's evaluation.⁶

The protest is denied.

Comptroller General
of the United States

⁶ The protester contends that the evaluation is not adequately documented because the Negotiation Memorandum contains no discussion of RGB's past performance and, therefore, Gray cannot decipher how the evaluation was conducted. Supplemental Protest at 2. While the Negotiation Memorandum merely states that RGB's past performance is rated "low risk" without explanation, as discussed above, the record contains ample documentation to support the low risk rating, and the contracting officer has adequately explained her rationale for giving RGB that low risk rating consistent with and based upon the abundant documentation in her possession.