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Comptroller General
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Decision

Matter of: Professional Performance Development Group, Inc.

File: B-279561.2; B-279561.3; B-279651; B-279651.2

Date: July 6, 1998

Theodore Bailey, Esq., and Johnathan M. Bailey, Esq., Theodore M. Bailey, P.C., for the protester.

Col. Nicolas P. Retson, Lt. Col. Samuel T. Stevenson, and Robert D. Hamel, Esq., Department of the Army, for the agency.

Henry J. Gorczycki, Esq., and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Discussions adequately led protester to agency's concern about an extra layer of management arising from a proposal for occupational health care services, which offered a corporate-level coordinator in addition to a required nurse program coordinator, where only one of the positions was required by the solicitation, and the discussion question asked for a discussion of the process and the responsibilities of both positions.
2. Protester is not an interested party eligible to protest the evaluation of the awardee's proposal where it would not be next in line for award if its protest of the evaluation were sustained.

DECISION

Professional Performance Development Group, Inc. (PPDG) protests the award of contracts to OMV Medical, Inc. under request for proposal (RFP) No. DADA10-98-R-0002 (RFP 0002) and RFP No. DADA10-98-R-0003 (RFP 0003), issued by the Department of the Army for nonpersonal occupational health care services for federal employees at existing and future Federal Occupational Health (FOH) provision sites in several states per each solicitation. PPDG alleges that discussions held with PPDG were inadequate and that the evaluation of OMV's proposal was unreasonable.

We deny the protests in part and dismiss them in part.

The RFPs, issued on September 30, 1997 as section 8(a) set-asides, contemplated awards of fixed-price, indefinite-quantity contracts for a base period with 4 option years. The RFPs, at sections M.2.5 and M.2.5.2, stated a best value evaluation scheme with the following four factors: (1) past and present performance; (2) contractor quality control plan; (3) technical quality (oral presentation); and (4) price/cost. The RFPs stated the relative weights of these factors as:

Factors 1 and 2 are equal and, individually, are less important than factor 3, and factors 1, 2, and 3 are more important than factor 4. The government is interested in proposals that offer value in meeting the requirements - performance and technical quality with acceptable risk at a fair and reasonable price. Factor 4, however, could become the determinative selection factor if technical quality proposals are determined to be substantially equal, or if a proposal deemed superior in technical quality is determined not to be worth the high cost premium.

Eleven offerors submitted proposals in response to each RFP. The agency evaluated proposals and established a competitive range of six proposals submitted by the same six offerors under each RFP.

PPDG's proposal, which was included with OMV's proposal in the competitive range, received an overall "good" rating.¹ Among the weaknesses found in PPDG's proposal was its quality control plan, which was scored/rated as 81/good. The specific concerns with the quality control plan included confusing job titles and responsibilities, an organization chart which did not recognize the contracting officer's representative's (COR) functions related to the wellness/fitness program, and an unnecessary layer of corporate-level management (*i.e.*, corporate-level coordinators) between the nurse program coordinators and the top of the corporate structure.

The competitive range offerors received written discussions. The discussion letter, dated January 5, 1998, to PPDG stated the following:

¹The rating/point scale was as follows:

Excellent	-	91-100
Good	-	81-90
Poor	-	61-80
Unsatisfactory	-	0-60.

The quality control plan does not clearly state who does what; seems to confuse job titles and responsibilities. The organizational chart does not recognize COR functions in relationship to wellness/fitness program. Discuss process and responsibilities of clinical coordinators at corporate level and nurse program coordinators.

PPDG responded by supplementing its quality control plan with more information about staff positions and responsibilities, and an explanation of the COR functions in relation to the program. It also described the role of the corporate-level coordinators as providing program coordinators with an "additional resource" for addressing contract concerns.

The agency reevaluated the proposal revisions submitted by the competitive range offerors. In the case of PPDG, its response adequately addressed most of the agency's concerns. However, PPDG's response essentially confirmed to the evaluators that the corporate-level coordinators proposed by PPDG were superfluous layers of management. Under the quality control plan factor, PPDG's score was increased to 88, although its rating remained the same. PPDG's revised proposal received an overall score/rating of 92.5/excellent.

Subsequently, the agency sought clarification from OMV and one other offeror. Upon review, the Army determined that these communications might have constituted an additional round of discussions with only two offerors. As a result, on February 26, all offerors were notified that discussions were re-opened and that offerors had the opportunity to submit additional information. The Army did not identify additional concerns or request specific information from any offeror, other than requesting an extension of offers through March 31. No offerors expressed interest in submitting further proposal revisions and discussions were closed later that day. The notice announcing the close of discussions requested either final proposal revisions, or a statement of no proposal changes be submitted by the following day. PPDG's response stated that it did not wish to further revise its proposal.

The final evaluation results were as follows:

Offeror	Overall Score/Rating	Price ² for RFP 0002	Price for RFP 0003
A	93.15/excellent	\$19,459,517	\$18,722,585
B	92.73/excellent	18,969,675	18,351,189
PPDG	92.5/excellent	19,176,207	17,926,986
OMV	88.83/good	16,388,658	16,236,257
C	87.38/good	17,298,638	16,998,704
D	86.2/good	17,621,529	16,871,631

The agency determined that the score difference of 6.95 points between the highest-rated and lowest-rated proposals did not represent a significant difference in overall technical quality; thus, all six proposals were considered technically equal. Consequently, OMV's lowest-priced proposals on the two RFPs, the prices of which had been found fair and reasonable, were determined to represent the best value to the government. The Army awarded a contract to OMV under RFP 0002 on March 11, and under RFP 0003 on March 16. PPDG's protests followed. The Army has suspended contract performance under both contracts.

PPDG first alleges that it received inadequate and/or misleading discussions on the corporate-level coordinator positions. PPDG contends that the initial evaluation clearly found that these positions were an unnecessary extra layer of management, but the discussion question requested only further discussion of the positions. PPDG contends that this discussion question did not convey the true concern of the agency and misled PPDG into providing only additional information about the positions. It alleges that, had it understood the agency's concern, PPDG would have eliminated the positions in question, which would have lowered its price and raised its technical score.

²These prices are the proposed prices including applicable escalation as proposed by each offeror. To the extent PPDG initially alleged that the agency incorrectly calculated its price, the agency's basis for calculating prices was disclosed in the agency report, and PPDG does not challenge the price-plus-escalation calculations.

Discussions are legally adequate if offerors are advised of the weaknesses, excesses, and deficiencies in their proposals. Renaissant Dev. Corp., B-260947, Aug. 7, 1995, 95-2 CPD ¶ 58 at 5; DynCorp, et al., B-257037.2 et al., Dec. 15, 1994, 95-1 CPD ¶ 34 at 14. Although discussions should be as specific as practicable, E.L. Hamm & Assocs., Inc., B-250932, Feb. 19, 1993, 93-1 CPD ¶ 156 at 4, discussions need not be all encompassing nor overly specific in describing the extent of the agency's concerns, but rather must generally lead offerors into the areas of their proposals which require amplification or correction without being misleading. Renaissant Dev. Corp., supra; DynCorp, et al., supra.

Here, the discussion question posed to PPDG identified as an area of concern the process and responsibilities of the corporate-level coordinators and the nurse program coordinators. The agency's specific request for discussion of process was stated in addition to a general concern that the titles and responsibilities of all positions under the quality control plan lacked clarity and were confusing. Since the corporate-level coordinator positions were not solicited by the RFPs and the protester's response to the communication clearly identified the position as an extra management resource, we think that the request for discussion of "process" concerning these extra positions, particularly in association with the required nurse program coordinator position, was a reasonable notice of the agency's area of concern. Discussions here were thus meaningful and not misleading.³

PPDG also alleges that OMV's price was too low to reflect realistic staff compensation rates, which was a stated consideration under the price factor, and that OMV's final proposal did not address other price concerns identified by the agency. Given that we have denied PPDG's protest of the adequacy of discussions and PPDG has not otherwise challenged the evaluation of its proposal, we find that PPDG is not an eligible interested party to maintain a protest of the evaluation of OMV's proposal. This is so because there are intervening, technically equal, lower-priced offerors that would be in line for award if OMV's proposal were rejected, and PPDG does not challenge the evaluation of these intervening offerors.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C.A. §§ 3551-56 (West Supp. 1998), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the

³To the extent PPDG alleges that the Army should have advised PPDG of the agency's continuing concern about the corporate-level coordinators when discussions were reopened, once PPDG received adequate discussions on this area of concern, the agency was not required to advise PPDG of continuing concerns during successive rounds of discussions. See Speedy Food Serv., Inc., B-274406, Dec. 9, 1996, 96-2 CPD ¶ 218 at 4; Rockwell Int'l Corp., B-261953.2, B-261953.6, Nov. 22, 1995, 96-1 CPD ¶ 34 at 13.

failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1998). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit of relief sought by the protester, and the party's status in relation to the procurement. Black Hills Refuse Serv., B-228470, Feb. 16, 1988, 88-1 CPD ¶ 151 at 2-3. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

Here, the agency determined that all proposals were technically equal, so the selection decision under the stated award scheme was based on price. Under RFP 0002, there are three technically equal, lower-priced proposals in line for award behind OMV's proposal, and ahead of PPDG's proposal. Under RFP 0003, there are two technically equal, lower-priced proposals ahead of PPDG's proposal. Since PPDG has not challenged any of these intervening proposals that would precede the protester's proposal in eligibility for award under this solicitation, the protester lacks the direct economic interest required to maintain a protest of OMV's evaluation.

The protests are denied in part and dismissed in part.

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