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Decision

Matter of: Harbor Services, Inc.

File: B-408325

Date: August 23, 2013

Dana Woodrum Lang, Esq., Womble Carlyle Sandridge & Rice, LLP, for the protester.

Francis M. Ervin II, Esq., Rogers Townsend & Thomas, PC, for the intervenor.

Ricarto Brazela, Esq., Department of Veterans Affairs, for the agency.

Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Challenge to evaluation of awardee's corporate experience is denied where contracting officer reasonably relied on fact that staff and assets of awardee's predecessor company were transferred to or otherwise available to awardee; awardee proposed other key personnel who were experienced in similar work at the installation and proposed to rely on experienced subcontractors; and awardee demonstrated adequate financial resources.

2. Protest of evaluation of protester's proposal for construction contract under project personnel experience subfactor is denied where record indicates that evaluators reasonably assessed a weakness based upon fact that proposed design subcontractor was "new" and experience of most design personnel was not demonstrated.

DECISION

Harbor Services, Inc., of Mount Pleasant, South Carolina, protests the Department of Veterans Affairs' (VA) award of a contract to MedPro Systems, Inc. (MedPro), of Charleston, South Carolina, under request for proposals (RFP) No. VA247-13-R-0171, for design/build construction services at the Ralph H. Johnson VA Medical Center (VAMC) in Charleston, South Carolina. Harbor challenges the evaluation of proposals, and the best value award decision.

We deny the protest.

BACKGROUND

The RFP, issued on February 5, 2013, requested proposals for the award of a fixed-price design build contract to renovate clinical space at the Ralph H. Johnson VAMC at Charleston, South Carolina. The procurement was restricted to service-disabled veteran-owned small business (SDVOSB) concerns. Id.¹ The RFP set forth a two-phase evaluation process, including a technical phase (Phase I) and a price phase (Phase II). RFP at 15. The RFP provided that “Phase I proposals will be evaluated to determine which offerors will submit proposals in Phase II.” Id. Evaluation factors under Phase I included: construction management, including subfactors for corporate project experience, project personnel experience, and technical management approach; past performance (client satisfaction), including subfactors for overall client satisfaction with projects and overall client satisfaction with design build period services; schedule; and project examples. RFP at 17-21. A maximum of the five most highly rated Phase I offerors were to be invited to submit Phase II price proposals. RFP at 21.

Award was to be made to the responsible offeror “whose technical/cost relationship represented the best value.” RFP at 15-16. In this regard, each evaluation factor other than price was weighted approximately equal, while all evaluation factors other than price, when combined, were considered approximately equal to price. Id.

Six Phase I proposals were received on March 5, 2013. Both Harbor and MedPro received overall outstanding ratings for their Phase I technical proposals. A source selection evaluation board (SSEB) recommended that three firms, including both Harbor and MedPro, be permitted to submit Phase II proposals. CO Statement at 2; SSEB Report at 17. MedPro’s Phase II price of \$3,323,162 was approximately 4.7%

¹ Harbor initially challenged in its protest the SDVOSB status of MedPro, but those protest grounds were summarily dismissed prior to the agency report as outside GAO’s jurisdiction. See TEC/WEST-TEC JV, B-402573.3, July 30, 2010, 2010 CPD ¶ 174 at 2-3 (issues regarding the awardee’s SDVOSB and/or small business status under VA procurement are outside GAO’s jurisdiction). Subsequent to the agency report, the VA Office of Small and Disadvantaged Business Utilization (OSDBU), in response to a size status protest by Harbor, determined that MedPro is not a valid SDVOSB concern. Letter from OSDBU to MedPro, June 28, 2013. MedPro thereupon filed a complaint with the United States Court of Federal Claims challenging the OSDBU determination. Intervenor E-mail to the Parties, June 28, 2013. According to the agency, in the course of this court litigation, “MedPro sought and received assurance that the VA intended to continue with the award to MedPro in the immediate matter.” Agency E-Mail to GAO, August 13, 2013. According to the agency, the contracting officer has not issued a notice to proceed to MedPro, pending GAO’s decision in this protest. Id.

(\$164,338) less than Harbor's price of \$3,487,500. Based on a review of the subsequent Phase II proposals and the Phase I evaluation, the contracting officer determined that MedPro's proposal represented the best value, since its past performance and experience surpassed that of the other offerors, there were no substantial technical advantages in the highest-rated proposals, and MedPro's price was the lowest price received. CO Declaration, Aug. 16, 2013, at 2-3. Upon learning of the resulting award to MedPro, Harbor first filed an agency-level protest and then filed this protest with our Office.

DISCUSSION

MedPro Corporate Experience Evaluation

Harbor challenges the agency's evaluation of MedPro's proposal under the corporate project experience subfactor of the construction management factor, asserting that MedPro has "zero corporate experience." Protest at 2-3. Harbor asserts that the agency thus should have assigned a weakness to MedPro's proposal under this subfactor instead of the outstanding technical rating that was given. Id.

As noted by the agency, however, MedPro's proposal indicated that MedPro was in the process of "transitioning from International Public Works, LLC" (IPW), and that both MedPro and IPW were owned by a professional engineer who was proposed as the overall project manager for this project. MedPro Proposal at 3, 16. In this regard, the agency indicates that, in evaluating MedPro's corporate experience, it considered such information as the fact that MedPro's overall project manager for the current project had personally overseen VA project activities for IPW, and that other key personnel from IPW who had worked on numerous VA medical center projects (including the proposed construction project manager and site superintendent) were proposed for this current project. In addition, other proposed key personnel (including the architect design project manager, architect field representative, and the engineer field representative) were from an engineering and design subcontractor (O'Brien & Gere) and had worked on construction projects at the Ralph N. Johnson and other VA medical centers. Supplemental Legal Memorandum at 2-3; Declaration of Contracting Officer; MedPro Proposal at 16-25, 36.

As for IPW, MedPro's predecessor, the agency noted four separate projects at the Ralph H. Johnson VAMC: two projects to renovate inpatient privacy suites, one to create a sterile clean core to support a surgical suite, and another to renovate and expand a surgical suite. Supplemental Legal Memorandum at 23; Declaration of Contracting Officer; Supplemental Contracting Officer's Statement; MedPro Proposal at 10-14. Further, the agency noted favorable (including "outstanding") performance on these projects and others as well. AR at 13; SSEB Report at 14. In addition to the above proposed experienced key personnel, MedPro proposed to use local

subcontractors who have worked at and are familiar with the Ralph H. Johnson VAMC. MedPro Proposal at 34. In sum, the record indicates that in finding MedPro responsible, the agency relied upon extensive information concerning the resources MedPro proposed to use, including (1) skilled experienced personnel, subcontractors, and financial resources, (2) the performance record of the predecessor company IPW, and (3) proposed key personnel. See FAR § 9.104-1.

Harbor argues that any consideration of IPW's experience in evaluating MedPro's corporate experience was improper. Protest at 2. We disagree. We have previously held that, absent solicitation language to the contrary, an agency properly may consider the relevant experience and past performance of key individuals and predecessor companies; such experience and past performance may be useful in predicting success in future contract performance. See Advant-EDGE Solutions, Inc., B-400367.2, Nov. 12, 2008, 2008 CPD ¶ 210 at 4 (agency may properly consider experience of predecessor firm or corporation's principal officers under experience evaluation factor); Family Entertainment Servs., Inc., B-298047.3, Sept. 20, 2006, 2007 CPD ¶ 59 at 8 (agency may properly consider experience and past performance of key individuals and predecessor companies in evaluating past performance); Firma Hermann Leis, B-296956, B-295956.2, May 19, 2005, 2005 CPD ¶ 102 at 3 (agency may properly consider experience of the corporation's principal officers, employees and predecessor company in determining compliance with definitive responsibility criterion).

Here, the record indicates that key personnel and assets of IPW, the predecessor firm, are now transferred to or otherwise available to MedPro, providing for continuity of operations between the two firms and making IPW's experience relevant to predicting MedPro's successful performance of the contract. See Al Hamra Kuwait Co., B-288970, Dec. 26, 2001, 2001 CPD ¶ 208 at 4-5. These included, for example, the professional engineer who owns both firms and was proposed as the overall project manager for this project; the proposed construction project manager and site superintendent; and a multiple award task order contract with VA which was transferred from IPW to MedPro by a novation agreement executed with VA shortly before the award to MedPro. CO Statement at 1-3. Thus, consideration of IPW's experience was not improper. In these circumstances, we conclude that Harbor has shown no basis to question evaluation of MedPro's corporate experience.

Harbor Project Personnel Experience

Harbor also challenges the agency's evaluation of its proposal under the project personnel experience subfactor of the construction management factor. The SSEB assigned the following weakness under this factor with regard to Harbor's proposed design firm: "Design firm is new. The majority of the designer's experience is with other firms." SSEB Report at 11. Harbor asserts the while its design firm is "fairly new," its owner and project designer "is not an unfamiliar name or face at the Charleston VA Medical Center." Protest at 2. In this regard, Harbor points to

several places in its Phase I proposal that indicate that the project designer has experience working with the VA and at the VAMC at which work under the contract is to be performed. Id.

In reviewing an agency's evaluation of proposals and source selection decision, it is not our role to reevaluate submissions; rather, we examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Trofholz Techs., Inc., B-404101, Jan. 5, 2011, 2011 CPD ¶ 144 at 3. A protester's disagreement with the agency's evaluation judgments, or with the agency's determination as to the relative merits of competing proposals, does not establish that the evaluation or the source selection decision was unreasonable. Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7; ITW Military GSE, B-403866.3, Dec. 7, 2010, 2010 CPD ¶ 282 at 5.

Here, the agency's evaluation under the project personnel experience subfactor was reasonable. The contracting officer reports, and Harbor has not rebutted, that while Harbor's project designer was not unknown at the Ralph H. Johnson VAMC, the other personnel listed for the design firm were unknown to the evaluators, and the proposal was not detailed enough to form an opinion as to the relevant experience of the other personnel of Harbor's "Design Build team." CO Supp. Statement at 1. In our view, there was nothing unreasonable about the agency's concern that the overall design firm was new, even if its project designer was experienced. In addition, there was nothing unreasonable about the agency's concern that the designers had not previously worked together or that the experience of the other design personnel had not been demonstrated. In these circumstances we find no basis to question the assignment of a weakness in this area.

MedPro's Responsibility

Further, Harbor challenges the contracting officer's affirmative determination of MedPro's responsibility. In this regard, we will consider protests challenging affirmative determinations of responsibility: (1) where it is alleged that definitive responsibility criteria in the solicitation were not met, or (2) where evidence is identified that raises serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2013); Precision Standard, Inc., B-310684, Jan. 14, 2008, 2008 CPD ¶ 32 at 4.

Here, Harbor does not argue that definitive responsibility criteria in the RFP were not met, but does assert that the contracting officer unreasonably failed to consider available relevant negative information regarding MedPro's responsibility.

Specifically, Harbor asserts that the entry for MedPro on the VetBiz² website indicated an address which appears to be a private residence, which Harbor asserts is “not indicative of a multi-million dollar construction company,” Agency Protest, exh. E; and (2) that an internet Dun & Bradstreet report for MedPro indicates that MedPro is a “wholesale medical equipment company,” not a construction company, and has only two employees. Agency Protest, exh. F. According to the protester, this information should have indicated to the agency that MedPro lacked the infrastructure needed to support a multi-million dollar construction project.

The record, however, indicates that in finding MedPro responsible, the agency relied in part upon the resources and the performance record of IPW, the predecessor company, and proposed key personnel. See Federal Acquisition Regulation (FAR) § 9.104-1. Supplemental Legal Memorandum at 2-3; Declaration of Contracting Officer; Supplemental Contracting Officer’s Statement; Determination of Contractor’s Responsibility; MedPro Proposal at 10-14. Although Harbor argues that any consideration of IPW’s performance record in finding MedPro responsible was improper, we disagree. Under the FAR, one of the general standards of responsibility to be considered by the agency in making a responsibility determination is whether a prospective contractor has a satisfactory performance record. FAR § 9.104-1(d). Further, as discussed above, absent solicitation language to the contrary, an agency properly may consider the relevant experience and past performance of key individuals and predecessor companies; such experience and past performance may be useful in predicting success in future contract performance. See, e.g. Advant-EDGE Solutions, Inc., B-400367.2, supra, at 4 (agency may properly consider experience of predecessor firm or corporation’s principal officers under experience evaluation factor). Thus, consideration of IPW’s resources here was not improper.

Further, with regard to the specific issues raised by Harbor, the Determination of Contractor Responsibility noted that MedPro had a favorable Dun & Bradstreet financial rating and had been able to obtain bonding from a reputable bonding company. Additionally, the agency reports that, in fact, MedPro advises that it does not operate out of a private residence, but rather out of a commercially zoned facility. CO Statement at 3; AR at 12, citing AR exh. 29, MedPro Letter to OSDDBU, June 5, 2013, at 1. Accordingly, we see no basis to conclude that the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation, which as noted above, is a necessary predicate for our Office to question the contracting officer’s affirmative determination of MedPro’s responsibility. See Precision Standard, Inc., B-310684, supra, at 4.

² VetBiz.gov (VetBiz) is a Web portal VA maintains at <http://www.VetBiz.gov>. It hosts the Vendor Information Pages (VIP) database. See 38 C.F.R. § 74.1.

Source Selection Decision

Finally, Harbor challenges the agency's best value source selection decision, asserting that notwithstanding Harbor's price premium of \$164,388, the agency "would be better served in awarding the project to a legitimate, qualified SDVOSB," with an overall outstanding rating, rather than to a "medical supply firm" which is not a legitimate SDVOSB. Protest at 3.

The best value determination here was unobjectionable. As an initial matter, the fact that the OSDDBU determined that MedPro is not a valid SDVOSB, and the proper status of the awardee in this regard, is now before a court of competent jurisdiction. Accordingly, we will not address it. 4 C.F.R. § 21.11(b); see Oahu Tree Experts, B-282247, Mar. 31, 1999, 99-1 CPD ¶ 69. Further, as previously discussed above, the characterization of MedPro as simply a medical supply company does not account for the experienced key personnel, design team, and experience attributable to MedPro (i.e., the performance and experience of its predecessor company, IPW) which the agency reasonably determined were indicators of likely success in future contract performance.

In her best value determination, the contracting officer noted that "MedPro offers superior advantages and presented by far the best combination of specific past performance and experience, received an Outstanding technical rating and is the lowest priced Offeror." CO Statement at 3. In this regard, the contracting officer advises that "a review of the technical merits of both proposals did not identify any substantial advantages for either proposal which would clearly distinguish one from the other proposal." CO Declaration, Aug. 6, 2013, at 1. The contracting officer concluded that since "the technical merits of both proposals indicated that they were approximately equivalent and both proposals offered acceptable alternatives in meeting the medical center's requirement," MedPro's lowest-priced proposal therefore represented the best value to the government. Id. at 2-3. Harbor has not shown this determination that the proposals were essentially technically equal to be unreasonable, and thus there is no basis to question award to the lowest-priced offeror.

The protest is denied.

Susan A. Poling
General Counsel