



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: J&E Associates, Inc.

File: B-283448

Date: November 3, 1999

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Williams Mullen Clark & Dobbins, for the protester.

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GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where the protester fails to meaningfully challenge the evaluation of its past performance and where the awards were made in accordance with the terms of the solicitation.

DECISION

J&E Associates, Inc. protests the awards of contracts to Hunter Medical, Inc., Sterling Medical Associates, and Chesapeake Center, Inc., under request for proposals (RFP) No. N62645-99-R-0001, issued by the Naval Medical Logistics Command, Department of the Navy, for multi-disciplinary healthcare worker services for government medical treatment facilities in the Portsmouth, Virginia area. J&E essentially challenges the agency's past performance evaluation of its proposal and the award decisions.

We deny the protest.

The RFP, as amended, contemplated the award of three indefinite-delivery/indefinite-quantity, fixed-price task order contracts to those offerors whose proposals were determined most advantageous to the government, technical evaluation factors and price considered. RFP amend. 5, at 5 and attach. 1, at 3. The RFP listed two technical evaluation factors--past performance and management plan for recruitment and retention. (The former was twice as important as the latter.) RFP at 77, 80.

With respect to the past performance evaluation factor, the RFP required offerors to describe their past performance within the past 5 years, with the agency giving greater consideration to the most relevant experience, that is, the provision of medical services similar to those identified in the solicitation. *Id.* at 77. More specifically, offerors were advised to provide past performance information corresponding to each of the following broad categories of providers identified in the amended RFP schedule: (1) healthcare provider services (e.g., family practice and pediatric physicians, family and pediatric nurse practitioners, orthopedic physician assistants, dermatologists, internists, OBGYNs, and radiologists); (2) nursing services (e.g., primary care registered and licensed practical nurses, medical assistants, nurse managers, health educators, and certified registered nurse anesthetists); (3) ancillary support services (e.g., pharmacists, technicians (pharmacy, laboratory, radiology, dietetic, emergency medical, mammography, and surgical/operating room), optometrists, occupational therapy assistants, opticians, and phlebotomists); and (4) allied health services (e.g., pharmacists, optometrists, audiologists, clinical psychologists, clinical social workers, dieticians, occupational and physical therapists, physician assistants, and speech pathologists). These labor categories were to be furnished at the Naval Medical Center Portsmouth and its branch clinics. RFP amend. 5, at 5 and attach. 5, at 7-15. Offerors were advised that the agency would not assume that a firm possessed any capability unless it was specified in its proposal. RFP amend. 5, at 5. The RFP also provided that the provision of medical services on contracts at multiple locations would be considered as similar experience. RFP at 77. An offeror's past performance would receive one of the following adjectival ratings: very low risk, low risk, moderate risk, substantial risk, and unknown risk. Agency Report, Tab 3, Source Selection Plan, at 10-11.

With respect to the management plan evaluation factor, the RFP required offerors to describe how they would recruit qualified personnel for performance of the task orders; to describe plans, including information on confirming healthcare worker credentials, to ensure timely commencement of task order services; and to describe procedures and techniques to retain personnel. RFP at 78. An offeror's management plan would receive an adjectival rating of exceptional, acceptable, or unacceptable. Agency Report, Tab 3, at 11.

With respect to price, offerors were required to provide unit and extended prices for minimum quantities of labor hours for line item Nos. 1 through 3, corresponding to categories of healthcare provider, nursing, and ancillary support/allied health personnel. Prices for the minimum quantities under these three line items would be determined at the time of award. Minimum quantities under these line items would be satisfied by the issuance of task orders at the time of award. RFP amend. 5, attach. 1, at 7-9, 15. Offerors were also to provide not-to-exceed (NTE) unit and extended prices for maximum quantities of labor hours for line item Nos. 4 through 8, corresponding to categories of medical personnel exceeding the minimum quantities. *Id.* at 10-15. Under the amended RFP, the offerors awarded contracts for line item Nos. 1 through 3 would be given the opportunity to compete for subsequent task orders (line item Nos. 4 through 8) and could discount their NTE prices for

these items based on specific locations and performance periods. Id. at 15. All prices would be evaluated for completeness, reasonableness, and realism. RFP amend. 5, at 6.

In determining those offerors whose proposals were most advantageous to the government, the RFP provided that the combined technical evaluation factors were significantly more important than price. Id. In addition, the RFP provided for awards to other than the lowest priced proposal, and that price premiums could be considered to facilitate awards to three different offerors to gain the advantages associated with increased competition for future task orders. Id.

Fifteen firms, including J&E, Hunter, Sterling, and Chesapeake, submitted timely initial technical and price proposals by the stated closing time. The proposals of these four firms were among those included in the competitive range. The agency conducted multiple rounds of written and oral discussions with the competitive range offerors. The relevant, final overall technical rankings and evaluation factor ratings were as follows:

	Past Performance	Management Plan
(1) Sterling	Low Moderate Risk	Acceptable
(2) Chesapeake	Low Moderate Risk	Acceptable
(3) Hunter	Low Moderate Risk	Acceptable
(7) J&E	High Moderate Risk	Acceptable

Agency Report, Tab 59, Supplemental Proposal Analysis Report, July 27, 1999, at 6.¹

As relevant here, for the past performance evaluation factor, the agency believed that J&E adequately demonstrated performance on contracts similar in magnitude and complexity to the solicitation requirements. J&E received credit for having provided large numbers of healthcare workers under single contracts at various geographic locations. The agency noted no particular instances of poor or problematic performance by J&E. In fact, J&E's references reported timely startup (very positive remarks), recruitment of competent personnel, very successful provision of consistent and reliable staffing, and overall outstanding quality of services. Agency Report, Tab 8, Technical Evaluation Report, Apr. 12, 1999, at 6, 12.

However, the agency believed that J&E failed to demonstrate past performance on contracts similar in scope to the solicitation requirements. In this regard, the agency concluded that J&E demonstrated that it had provided healthcare workers corresponding to some, but not all, of the provider categories covered by the

¹At each stage of the evaluation process, the past performance and management plan ratings were supported by detailed evaluation narratives.

amended RFP. More specifically, J&E's proposal showed that the firm has furnished an insignificant number of physicians, some nurses, no pharmacists, and no technicians (pharmacy, laboratory, radiology, or mammography). Instead, most of the firm's experience is in furnishing personnel in support of family advocacy, counseling, and occupational medicine efforts in non-hospital settings. Agency Report, Tab 4, J&E's Initial Proposal, at 2-10; Agency Report, Tab 40, Technical Evaluation Team Reports, July 13, 1999, at 7; see also Agency Report, Tab 8, at 6; Agency Report, Tab 10, Proposal Analysis Report, Apr. 15, 1999, at 15.

Based on information provided by J&E in its proposal, the agency concluded that the firm's past performance, while successful, basically involved providing healthcare workers in the areas of family advocacy, counseling, and occupational medicine, not in providing medical personnel in support of ambulatory/primary care settings. See Agency Report, Tab 59, at 15. In contrast, Hunter, Sterling, and Chesapeake had experience in providing medical personnel in support of ambulatory/primary care settings, which represented the primary solicitation requirements.² Id. at 7-10.

Awards were made to Hunter (line item No. 1--healthcare providers); Sterling (line item No. 2--nurses); and Chesapeake (line item No. 3--ancillary support personnel). Hunter's price for line item No. 1 and Sterling's price for line item No. 2 were lower than J&E's prices for these two line items. Chesapeake's price for line item No. 3 was less than 1 percent higher than J&E's price for this line item. Agency Report, Tab 11, Business Clearance Memorandum, July 29, 1999, at 46, 55-56, 60, 69-70.

In challenging the agency's evaluation of its past performance, J&E offers no meaningful rebuttal to the agency's conclusion that it did not have experience providing primary care medical personnel in hospital settings and that its experience involved the furnishing of healthcare workers only in the areas of family advocacy, counseling, and occupational medicine. Instead, J&E objects that the solicitation contained no qualifying language to justify downgrading the firm's proposal based on its lack of experience in providing primary care medical personnel in hospital settings. Protester's Comments at 12. However, we believe that J&E is factually incorrect.

²For the management plan evaluation factor, the agency concluded that J&E, as well as Hunter, Sterling, and Chesapeake, demonstrated that they could recruit and retain personnel to successfully satisfy the solicitation requirements. In addition, the prices submitted by these offerors were considered complete, reasonable, and realistic.

The amended RFP specifically stated that the agency would not:

assume that the offeror possesses any capability unless it is specified in the proposal. Offerors are advised that past performance information provided should address each of the four broad categories of providers identified in Section B.11 (e.g., Healthcare Provider Services (CLINs 0001 and 0004)[,] Nursing Services (CLINs 0002, 0005, and 0006), Ancillary Support Services (CLINs 0003 and 0007), and Allied Health Services (CLIN 0008)), as specified in CLINs 0001 through 0008.

RFP amend. 5, at 5.

As relevant here, for line item Nos. 1 through 3, section B.11 of the amended RFP stated that the contractor would perform healthcare provider, nursing, and ancillary support services at the “Naval Medical Center Portsmouth or one of its Branch Clinics.” RFP amend. 5, attach. 1, at 7-9.

Based on the language above requiring offerors to establish their past performance in providing healthcare workers in each of the four listed categories and in specific medical center and branch medical clinic settings, we believe an offeror, like J&E, should reasonably have expected the agency to consider the extent to which a firm had experience in providing the referenced categories of medical personnel in such settings. Consistent with the terms of the solicitation, the agency reasonably concluded that J&E did not have experience in providing primary care medical personnel in hospital settings.³

In addition, J&E argues that in evaluating its past performance, the agency should have considered its history of successfully hiring, orienting, placing, and retaining qualified healthcare workers in a wide array of settings. Protester’s Comments at 13. Again, the agency did consider J&E’s record of recruiting and retaining healthcare workers, but concluded that its historical record was in recruiting and retaining personnel in the areas of family advocacy, counseling, and occupational medicine,

³Contrary to J&E’s position, we do not believe the agency was required to conduct discussions with the firm regarding its performance history. In this regard, the record shows that the agency had no problems with J&E’s record of past performance, which otherwise could have been a basis for conducting discussions with J&E. See Federal Acquisition Regulation § 15.306(d)(3). Other than reiterating its record of past performance, J&E has provided no substantive information which, if the firm had been afforded discussions, could arguably have changed the agency’s conclusion that J&E’s experience was limited to furnishing healthcare workers in the areas of family advocacy, counseling, and occupational medicine.

not in recruiting and retaining primary care medical personnel in hospital settings as required by the solicitation.⁴

On this record, we believe J&E has failed to articulate any basis for questioning the reasonableness of the agency's evaluation of its past performance.⁵

J&E also challenges the agency's tradeoffs resulting in awards to Hunter and Chesapeake, offerors submitting technically superior proposals. J&E makes much of the fact that its NTE prices were lower than those of Hunter and Chesapeake, maintaining that for this reason, it should have received awards for line item Nos. 1 and 3.⁶

However, it is clear from the amended RFP that an offeror's fixed prices for line item Nos. 1 through 3, not its NTE prices for line item Nos. 4 through 8, were the relevant prices to be considered in any price/technical tradeoffs resulting in awards to

⁴J&E makes limited arguments with respect to the agency's past performance evaluations of the proposals of Hunter and Chesapeake. Concerning Hunter's healthcare provider (physician) contract, J&E acknowledges that Hunter has provided physician services in the past, but complains that the dollar value of those contracts was significantly less than that of the current procurement. Protester's Comments at 18. However, while the dollar value of prior contracts was one piece of information required to be considered in evaluating the relevancy and similarity of an offeror's past performance, the RFP clearly placed greater emphasis on how closely an offeror's experience in furnishing healthcare workers corresponded to the broad solicitation categories of medical providers. J&E does not dispute that Hunter, unlike itself, had relevant physician experience in primary care settings corresponding to line item No. 1, for which it was awarded a contract.

Concerning Chesapeake, J&E simply acknowledges that Chesapeake has experience providing mainly pharmacists and technicians, which correspond to the medical personnel to be furnished under Chesapeake's contract for line item No. 3. Protester's Comments at 19. Accordingly, we fail to see any impropriety with respect to the evaluation of Chesapeake's past performance.

⁵J&E also objects to the agency's use of "high" and "low" labels to differentiate the moderate risk past performance ratings. While the agency's source selection plan did not designate these additional labels, we do not find objectionable the agency's use of such labels because they simply reflected the agency's assessment of the degree to which an offeror's past performance posed a moderate risk, as supported by the past performance evaluation narratives.

⁶J&E does not challenge the award to Sterling, which submitted a technically superior, lower priced proposal (for line item No. 2 and for its NTE prices).

offerors submitting the most advantageous proposals. The NTE prices represented a worst-case scenario and were only relevant when offerors awarded contracts for line item Nos. 1 through 3 were given an opportunity to compete for subsequent task orders (line item Nos. 4 through 8). In other words, the NTE prices represented the maximum prices the agency would be required to pay in the future for line item Nos. 4 through 8. RFP amend. 5, attach. 1, at 15. Thus, we think that an offeror's NTE prices were not material to any tradeoffs made in awarding fixed-price line item Nos. 1 through 3.⁷

In determining the most advantageous proposals, the solicitation provided that the combined technical evaluation factors (past performance and management plan) were significantly more important than price. The agency also reserved in the solicitation the right to award to other than the offeror with the lowest priced proposal. For line item No. 1, J&E's fixed price was approximately 19 percent higher than Hunter's fixed price. For line item No. 3, J&E's fixed price was less than 1 percent lower than Chesapeake's fixed price. In these circumstances, where Hunter's price was significantly lower than J&E's, and where there was only a de minimis premium associated with Chesapeake's price, we conclude the agency reasonably awarded contracts to Hunter and Chesapeake, firms which submitted technically superior proposals reflecting their experience in providing primary care medical personnel in hospital settings as required by the solicitation.

The protest is denied.

Comptroller General
of the United States

⁷In an abundance of caution, the agency noted in its source selection documentation that it was worth paying an approximate 24 percent premium to Hunter and an approximate 4 percent premium to Chesapeake in order to receive the benefits of their technically superior proposals, namely, the lower performance risk associated with Hunter's and Chesapeake's more relevant past performance. Agency Report, Tab 11, at 55-56, 69-70.