



## Decision

**Matter of:** America's Pride

**File:** B-401114

**Date:** May 27, 2009

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Philip J. Saulnier for the protester.

Ronald A. Hickerson, for K&R Consulting, Inc., the intervenor.

Barton B. Evans, Esq., Department of Veterans Affairs, for the agency.

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### DIGEST

Protest challenging agency's evaluation of awardee's proposal is denied where evaluation was reasonable and consistent with solicitation's evaluation scheme.

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### DECISION

America's Pride (AP), of Dunn Loring, Virginia, protests the award of a contract to K&R Consulting, Inc., of Woodstock, Georgia, under request for proposals (RFP) No. VA-256-08-RP-0161 issued by the Department of Veterans Affairs (VA) for medical transcription services. The protester, the incumbent contractor providing these services, argues that the agency improperly evaluated K&R's proposal and thus made a flawed award decision.<sup>1</sup>

We deny the protest.

On April 29, 2008, the agency issued this solicitation as a total service-disabled veteran-owned small business set-aside (SDVOSB), seeking medical transcription services at various VA facilities. The solicitation contemplated the award of a fixed-

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<sup>1</sup> The protester was not represented by counsel and, therefore, did not have access to nonpublic information pursuant to the terms of a protective order. Accordingly, our discussion in this decision is necessarily general in nature to avoid reference to nonpublic information. Our conclusions, however, are based on our review of the entire record, including nonpublic information.

price contract with a 1-year base period and 4 option years. RFP at 6. The RFP established three evaluation factors: technical, past performance, and price. The technical factor was comprised of three subfactors—quality of offeror’s facilities, key project personnel, and management capabilities and approach—which were of equal importance. The technical evaluation factor was more important than the past performance evaluation factor and, when combined, technical and past performance were equal to price. The RFP provided for award to the offeror whose proposal was determined to be most advantageous to the government, all factors considered. Id. at 171.

Ten proposals were received and evaluated by the agency. The combined non-price factors were worth 50 points with technical worth 30 and past performance 20. Agency Report (AR) exh. 1(b), Price Negotiation Memorandum, at 4. As it relates to the protest, under the non-price factors, AP’s proposal was assigned an overall consensus score of 50 (of 50 possible) points; K&R’s proposal also received an overall consensus score of 50 points. AP’s total proposed price was \$12,139,176 and was assigned 25 (of 50 possible) points; K&R’s total proposed price was \$12,047,912.55 and was assigned 30 (of 50 possible) points.<sup>2</sup> AR exh. 7, Abstract of Offers. The contracting officer (CO) reviewed the evaluation findings and concluded that AP’s and K&R’s proposals were technically equal and, on that basis, selected K&R’s lower-priced proposal for award. AR exh. 1(b), Price Negotiation Memorandum, at 3.

After learning of the award and receiving a written debriefing, AP filed an agency-level protest. AP challenged K&R’s eligibility to receive this SDVOSB award,<sup>3</sup> and the agency’s evaluation of K&R’s proposal, including the determination that K&R had relevant past performance. The agency subsequently denied AP’s agency-level protest.

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<sup>2</sup> With regard to price, the total price proposed by the ten offerors ranged from \$10,536,601.17 to \$15,338,225.33. The agency ranked the total price proposed from the lowest to the highest, and assigned 50 (of 50 possible) points to the lowest-priced offer. Each subsequent proposed price received 5 fewer points from the lowest to the highest. AR exh. 7, Abstract of Offers. For the record, we recognize this is a unique and not particularly meaningful—*i.e.*, overly mechanical—approach to evaluating and comparing prices.

<sup>3</sup> At the heart of AP’s protest is its assertion that K&R is not an eligible SDVOSB because K&R’s merger with another company created a large business enterprise that exceeds the applicable size standard. Although the Small Business Administration (SBA) initially dismissed as untimely AP’s protest of K&R’s status, the CO independently requested that the SBA determine K&R’s eligibility for award. Ultimately, the SBA concluded that K&R is an eligible small business for this procurement. AR exh. 4(b), SBA Determination.

In its protest to our Office, AP again asserts that the selection of K&R was not made in accordance with the solicitation's stated evaluation factors, and again maintains that it was improper for the agency to assign maximum past performance points to K&R, a firm that AP alleges has never provided medical transcription services to the VA. AP's allegations flow from its "web searches" and "communications" with K&R personnel. Protest at 2; Protester's Comments at 2.

In this regard, the RFP stated that offerors were to identify in their proposals past or current contracts "of similar type, scope, size, and complexity" that were either ongoing or had been completed within the past 3 years. Offerors were also requested to provide information about customer satisfaction with its performance under the previous contracts. RFP at 166.

In reviewing protests of alleged improper evaluations, it is not our role to reevaluate proposals. Rather, our Office will review the agency's actions to ensure that the evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. WorldWide Language Res., Inc., B-297210 *et al.*, Nov. 28, 2005, 2005 CPD ¶ 211 at 3; Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. Moreover, where a solicitation contemplates the evaluation of offerors' past performance, the agency has the discretion to determine the relevance and scope of the performance history to be considered and our Office will not question the agency's judgment unless it is unreasonable or inconsistent with the terms of the solicitation or applicable procurement statutes and regulations. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4.

Contrary to the protester's assertion, in assessing the awardee's past performance history, the record shows that the agency reviewed the various contracts for similar work that were either ongoing or had been completed by K&R within the past 3 years. The agency also considered the favorable comments obtained from a VA contract reference regarding her experience with K&R's performance of transcription services at a VA facility. According to the agency, K&R's proven past performance and commitment to customer satisfaction (based on the comments the agency received) warranted the rating assigned. We have reviewed the entire record, including documentation of the CO's review and analysis of the offerors' proposals, and we find nothing unreasonable in the agency's evaluation conclusions.

In addition, we find unpersuasive the protester's suggestion that its past performance as the incumbent contractor performing these same requirements should have resulted in AP receiving a higher past performance rating than that assigned to K&R. The record clearly shows that the VA took into account the relevance of each contract referenced in the offerors' proposals as part of its evaluation and expressly concluded that each offeror's past performance merited the assigned ratings. We have reviewed this assessment, and we find nothing unreasonable about the agency's conclusion.

In sum, our review of the record confirms the reasonableness of the agency's evaluation of K&R's proposal and, consequently, its determination that K&R's proposal was the most advantageous to the government. The protester's disagreement with the agency's conclusions does not establish that the agency's evaluation was unreasonable.

The protest is denied.

Daniel I. Gordon  
Acting General Counsel