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Decision

Matter of: Carthage Area Hospital, Inc.

File: B-402345

Date: March 16, 2010

John G. McGowan, Esq., Bond, Schoeneck & King, PLLC, for the protester.
David B. Dempsey, Esq., and Megan Mocho Jeschke, Esq., Holland & Knight LLP, for Valor Healthcare, Inc., an intervenor.
David W. Altieri, Esq., Department of Veterans Affairs, for the agency.
Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Selection of higher-rated, higher-priced proposal is unobjectionable where the selection official reasonably determined that awardee's higher technical rating outweighed the protester's lower price.

DECISION

Carthage Area Hospital, Inc., of Carthage, New York, protests the award of a contract to Valor Healthcare, Inc., of Washington, D.C., under request for proposals (RFP) No. VA-528-09-RP-0139, issued by the Department of Veterans Affairs (VA) for the operation of an outpatient clinic in the agency's Veterans Integrated Service Network 2 (VISN 2) in upstate New York. Carthage, the incumbent contractor, challenges the agency's evaluation and source selection decision.

We deny the protest.

BACKGROUND

The RFP provided for the award of a fixed-price contract for the operation of a community-based outpatient clinic (CBOC) in Jefferson County, New York for a base year with 2 option years.¹ Award was to be made on a "best value" basis, considering

¹ The VA operates more than 800 CBOCs across the United States. The CBOCs, which are generally in more rural areas, provide the most common outpatient

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the following three evaluation factors (listed in descending order of importance): technical capabilities, past performance, and price. The technical capabilities evaluation factor included three subfactors, which were stated to be of equal weight: quality; management, experience and staffing; and geographic location. RFP at 91. Offerors were informed that the technical capabilities and past performance factors, when combined, were significantly more important than price.² Id.

Instructions for the preparation of proposals were provided for each evaluation factor and subfactor. For example, under the management, experience and staffing subfactor, offerors were to provide, among other things, a list of names of the qualified staff that the offeror intended to use (including detailed information such as certifications, licenses, and curriculum vitae) “and/or describe the mechanism” used to provide a qualified staff. Id. at 92-93. With respect to the geographic location subfactor, offerors were instructed to describe, among other things, the proposed facility’s access to public transportation, access to major highways, and how the facility’s geographic location will serve the anticipated clients. Id. at 94.

The agency received three proposals, including Carthage’s and Valor’s.³ Carthage’s and Valor’s proposals were included in the competitive range. Following discussions, the firms’ revised proposals were evaluated as follows:⁴

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services, including health and wellness visits, without the need to visit the VA’s larger medical centers. See www1.va.gov/health/MedicalCenters.asp.

² The RFP stated elsewhere that “the following [five] evaluation factors (listed in descending order of priority) shall be used to evaluate offers”: quality; management, experience and staffing; geographic location; past performance; and price. RFP at 92-94. The agency’s source selection decision is based upon the evaluation scheme described in the body of this decision—that is, using a technical capabilities evaluation factor composed of three equally weighted subfactors. This inconsistency was not protested.

³ Carthage has been operating the clinic at issue here since 2003. Valor operates 15 CBOCs for the VA, including 1 CBOC in the VISN 2 area. Agency Report (AR), Tab 6, Valor Proposal, at 6.

⁴ Proposals were assessed under the technical capabilities evaluation subfactors as excellent, good, satisfactory, marginal, or unsatisfactory. An excellent rating reflected a proposal that demonstrated an understanding of the requirements, an approach that significantly exceeded performance or capability standards, and had exceptional strengths that would significantly benefit the government. A good rating reflected a proposal that demonstrated an understanding of requirements, an approach that exceeded performance or capability standards, and had one or more strengths that would significantly benefit the government. A satisfactory rating

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		Carthage	Valor
Technical Capabilities			
	Quality	Satisfactory	Excellent
	Management, Experience & Staffing	Good	Excellent
	Geographic Location	Satisfactory	Excellent
Past Performance		Low Risk	Low Risk
Price		\$5,612,245	\$6,292,800

AR, Tab 11, Best Value Analysis.

The evaluators’ adjectival ratings were supported by narrative discussions that identified each offeror’s respective strengths and weaknesses under each factor and subfactor. With regard to Carthage’s proposal, the evaluators noted the firm’s incumbent experience, and found strengths in the firm’s proposal under the management, experience and staffing evaluation subfactor because, among other things, award to Carthage would cause “minimal disturbance” to the patients assigned there. See AR, Tab 10, Evaluation Worksheets, at 10. The evaluators also noted a weakness in Carthage’s proposal, *i.e.* that the firm had proposed inadequate [DELETED], and that, despite discussions concerning this weakness, the VA “did not see where [DELETED] provided in their proposal will resolve this issue.” Id. The evaluators further noted weaknesses in Carthage’s proposal under the geographic location subfactor because the location of Carthage’s proposed clinic was “20 minutes away from the largest [veteran] population in Jefferson County and [was] not in close proximity to any major highways.” Id. at 11. With respect to past performance, the evaluators found that the quality of Carthage’s past performance was satisfactory, and that the firm was “average in ranking amongst Syracuse CBOCs in regard to Quality, Satisfaction, and Performance.” Id. at 12.

The excellent ratings assigned to Valor’s proposal under the technical capabilities subfactors reflected the evaluators’ judgment that the firm’s proposal contained a number of strengths and no weaknesses. Specifically, under the quality subfactor, the evaluators noted that the firm was accredited by The Joint Commission for its ambulatory health care,⁵ had strong processes to [DELETED], and conducted monthly [DELETED]. Id. at 3.

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reflected a proposal that demonstrated an acceptable understanding of requirements, an approach that met performance or capability standards, and had few or no strengths. See AR, Tab 9, Source Selection Plan, at 6.

⁵ The Joint Commission is an independent, not-for-profit national body that accredits health care organizations. See www.jointcommission.org/AboutUs.

Under the management, experience and staffing subfactor, the evaluators noted, among other things, Valor's offer to provide [DELETED], a [DELETED], a [DELETED], a [DELETED] and a [DELETED]. The evaluators also cited the firm's low turnover rate for primary care and mental health care providers, and "excellent provisions for provider absences." Id. at 4. Under the geographic location subfactor, the evaluators cited Valor's proposed location in Watertown, New York. The evaluators noted that this location was in "the center of Jefferson County" where most veterans reside, and was in close proximity to major highways. Id. at 5. With respect to Valor's past performance, the evaluators noted:

Valor Health Care operates the Dunkirk CBOC in VISN 2 VA staff that works with Valor stated that they have an excellent understanding of the needs of the VA patients and have a working knowledge of VA programs

Additionally they stated that Valor provides excellent performance scores in all areas including Performance Measures, Access, and Patient Satisfaction. This is reiterated in the VISN 2 CBOC dashboard [rankings] as Dunkirk has been rated 1st or 2nd for the past three years.⁶

Id. at 6.

The final evaluation results were provided to the source selection authority (SSA), who compared the strengths and weaknesses assessed in the proposals and determined that Valor's technical superiority outweighed Carthage's price advantage. Specifically, the SSA noted that Valor's proposed clinic was "closest to the largest group of veterans," when compared to the location of Carthage's proposed clinic; offered the greatest opportunity for future growth; and offered easy access given its location "right off [Interstate] 81." AR, Tab 11, Best Value Analysis, at 3. The SSA also stated that the "compelling reason" for selecting Valor's proposal was the quality of care the firm had provided at the Dunkirk CBOC. Id. The SSA noted, with respect to Valor's higher price, that the firms' proposed prices for the option years were very similar and that Valor's higher price in the base year was "to be expected since this is a new clinic and Valor has the added expense of securing the space, buying furniture, and hiring staff." Id.

Award was made to Valor, and this protest followed.

⁶ The dashboard rankings monitor "quality," "satisfaction," and "access." Protest exh. 2, at 2.

DISCUSSION

Carthage objects to the agency's assignment of an excellent rating to Valor's proposal under the management, experience and staffing subfactor, complaining that Valor failed to adequately describe how it would provide qualified personnel. In this regard, Carthage contends that Valor's plan to hire staff after contract award was inadequate because it did not address the difficulty of getting health care professionals to move to "a somewhat remote area," or address limitations in the pool of potential employees in the local area.⁷ Protester's Comments, app., at 2.

In reviewing protests of alleged improper evaluations and source selection decisions, it is not our role to reevaluate submissions; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 3. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

Here, the record provides no basis to object to the agency's assessment of the awardee's proposal under the management, experience and staffing subfactor. This subfactor provided for the evaluation of more than the staff proposed by an offeror, or an offeror's plan to provide staff; rather, offerors were informed that the agency would also assess the offeror's scheduling methods, experience, planned organization, capability and plan to commence performance within required timeframes, proposed administrative support staff, average personnel turnover rate, and "detailed operational plan to include staffing for the first 90 days of clinic operation." RFP at 92-94. The agency's excellent rating assessment for Valor under this subfactor reflected the evaluated strengths for the firm's proposed [DELETED], its low [DELETED], its "excellent provisions for [DELETED]," and its employment of [DELETED] and [DELETED]. AR, Tab 10, Proposal Evaluation Worksheets, at 4.

⁷ Carthage also complains that Valor did not provide curricula vitae, licenses, or certifications for its staff, which Carthage argues is required by the RFP. This interpretation of the solicitation is inconsistent, however, with its plain language which informed offerors that they could provide this information, but did not require it. To the extent that the protester believes that the RFP should have required offerors to identify qualified staff and establish their qualifications, this ground of protest concerns an alleged apparent solicitation impropriety that should have been filed before the closing date for receipt of proposals under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (2009).

While the VA did not assess any strengths with respect to Valor's proposed staffing planning, it found acceptable Valor's mechanism for recruiting and hiring qualified staff. In this regard, the proposal stated

[DELETED]

See AR, Tab 6, Valor Technical Proposal, at 104. Valor further explained how it performs a comprehensive credentialing and background investigation on all candidates. Finally, Valor stated that "based on our history of successfully establishing fifteen (15) VA Community Based Outpatient Clinics, including the Dunkirk NY VA CBOC, in less than 45-60 days, [we have] learned that the best candidates are hired when we have actually won the award and are able to make an offer to the candidate for actual employment." Id. at 101.

Given Valor's specific description of the mechanism it proposed for hiring its staff and other evaluated strengths in its proposal under the management, experience and staffing subfactor, we find nothing unreasonable about the agency's evaluation of Valor's proposal in this regard.

Carthage also protests its own "good" rating under this subfactor, complaining that it should have received a higher rating because, as the incumbent, it "already had a complete, qualified staff in place and functioning," while Valor merely proposed to hire staff. Protester's Comments, app., at 4.

Contrary to Carthage's assertion, the evaluators acknowledged Carthage's advantages as the incumbent contractor, noting that an award to Carthage offered minimal disruption to patients. AR, Tab 10, Proposal Evaluation Worksheet, at 10. Carthage's lower evaluation rating under this subfactor reflected, however, the agency's assignment of a weakness for failing to provide [DELETED], despite the agency's discussions with the firm with respect to this concern. Id. In addition, the agency noted that Carthage had not provided [DELETED]. Id. As with the evaluation of Valor's proposal under this subfactor, the VA's evaluation of Carthage's proposal was based upon more than the firm's proposed staff (or mechanism to provide staff). Although Carthage disagrees with the agency's rating, its disagreement does not show that the agency's judgment was unreasonable.

Carthage also protests the agency's assessment, under the geographic location subfactor, that the location of Valor's proposed clinic was more favorable than Carthage's proposed location. As described above, the evaluators found that the proposed location of Valor's clinic in Watertown merited an excellent rating since Watertown is where most veterans in Jefferson County reside, the proposed site was in the center of the county, and the site was "in close proximity to major highways,"

among other things.⁸ Id. at 5. Carthage complains that Watertown's veteran population comprises only 16 percent of the county's overall veteran population, which, in Carthage's view, indicates that the VA has overstated the convenience of having a clinic in Watertown. Carthage also contends that veterans could easily travel from Watertown to Carthage, and that the Carthage location better serves veterans who use local highways, rather than the interstate.

We find no basis to disagree with the VA's evaluation of the proposals under this evaluation subfactor. Here, the record supports the agency's finding that Valor's CBOC location in Watertown offers numerous strengths. For example, the record shows that the highest concentration of veterans living in Jackson County live in Watertown, and that the number of veterans living in Watertown greatly exceeds the number living in Carthage. See AR, Tab 11, Best Value Analysis, at 8. Although Carthage disagrees with the agency's assessment of the relative merits of these proposed clinic locations, its disagreement does not show that the agency's judgment in this regard was unreasonable.

Carthage also protests the agency's evaluation of Carthage's past performance, complaining that the agency improperly applied the firm's "Dashboard" rankings for its CBOC in the VISN 2 area to conclude that the protester's performance had been average.⁹ Specifically, Carthage contends that the agency failed to use the most recent dashboard ranking; that is, the protester complains that the agency used information in the system as of August 2009, but it ignored the higher ranking Carthage received in October 2009. The record shows that the agency completed its evaluation of the firms' revised proposals before the issuance of the October 2009 dashboard ranking. Therefore, we do not find that the agency erred in failing to consider the October 2009 information. See AR, Tab 10, Proposal Evaluation Worksheets, at 1, 7 (evaluation of Valor's and Carthage's revised proposals was completed by October 19, 2009).

⁸ In addition to the views of the evaluators, the SSA also noted that the veteran's population in Watertown was three times larger than Carthage's, that Watertown had the greatest potential to handle increases in veterans' population, and that the interstate made travel to Watertown (especially in the winter months) easier for veterans. AR, Tab 11, Best Value Analysis, at 3.

⁹ Carthage also argues, for the first time in its comments, that the agency's evaluation of Valor's Dashboard ranking was unreasonable because Valor's only CBOC in the VISN 2 areas was not sufficiently similar to the CBOC at issue in this protest. This protest ground is untimely. The record shows that Carthage was informed in its oral debriefing that the VA had considered the Dashboard rankings as part of its evaluation. See AR, Tab 12, Notice of Debriefing, Nov. 16, 2009. However, Carthage did not assert this ground of protest in its protest.

Carthage also protests that the agency's evaluation of the awardee's past performance failed to consider negative past performance information. Specifically, the protester notes that the VA's Office of Inspector General (OIG) issued a report critical of certain aspects of Valor's performance of the operation of a CBOC in Monaca, Pennsylvania. See VA OIG Report No. 09-01446-26, "Healthcare Inspection Community Based Outpatient Clinic Reviews." Carthage contends that the VA "either was or should have been aware" of other allegations regarding Valor's allegedly poor performance on CBOC contracts. In support of this allegation Carthage provides a copy of a letter from a United States Senator to the VA requesting that the agency examine complaints about two CBOCs operated by Valor in Texas. Carthage also provides a number of newspaper articles from papers in Pennsylvania and Texas, discussing the OIG report and the allegations of poor care in Texas CBOCs.

Our Office has recognized that in certain limited circumstances an agency evaluating an offeror's proposal has an obligation (as opposed to the discretion) to consider "outside information" bearing on the offeror's proposal. International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5; G. Marine Diesel; Phillyship, B-232619, B-232619.2, Jan. 27, 1989, 89-1 CPD ¶ 90 at 4-5. Where we have charged an agency with responsibility for considering such outside information, the record has demonstrated that the information in question was "simply too close at hand to require offerors to shoulder the inequities that spring from an agency's failure to obtain, and consider this information." International Bus. Sys., Inc., *supra*; see GTS Duratek, Inc., B-280511.2, B-280511.3, Oct. 19, 1998, 98-2 CPD ¶ 130 at 14.

Here, the record does not demonstrate that this information was "too close at hand" for the agency to ignore. Specifically, there has been no showing that the VA employees involved in the evaluation or source selection were aware or should have been aware of the OIG report, the Senator's letter, or the articles in small newspapers located outside of New York State. Accordingly, we have no basis to conclude that the agency should have considered this information in its evaluation of Valor's past performance.

Finally, Carthage complains that the SSA's source selection decision placed disproportionate weight on the geographic location subfactor.¹⁰ Specifically, Carthage argues that the SSA unreasonably concluded that Valor's location

¹⁰ Initially, Carthage alleged that Valor was provided with information regarding the VA's preferences for the clinic (such as a preference to move the clinic to Watertown) that was not provided to all offerors. The VA responded to these allegations in its agency report, and Carthage's comments provided no rebuttal to the agency's position. Under these circumstances, we deem the issue to have been abandoned. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4.

outweighed “not only Carthage’s superior staffing proposal, but also the fact that Carthage proposed to provide the services for \$650,555.00 less than Valor.” Protester’s Comments, app., at 7.

We find no basis to question the source selection decision in this regard. As discussed above, offerors were specifically informed that the agency would consider the offeror’s proposed clinic location, given that the RFP included a subfactor for “geographic location” requiring offerors to describe how their proposed location would “best serve the clients anticipated to use the program.” See RFP at 94. The SSA’s decision gave measured weight to the strengths assessed in Valor’s proposal for its proposed location in Watertown. In this regard, the selection decision also discusses both firms’ evaluated strengths and weaknesses. While Carthage disagrees with the significance assigned by the SSA to Valor’s proposed clinic location, this disagreement does not demonstrate that the SSA’s decision was unreasonable.

The protest is denied.

Lynn H. Gibson
Acting General Counsel