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## Decision

**Matter of:** Countywide Transportation

**File:** B-408422

**Date:** September 16, 2013

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Bruce M. Strikowsky, Esq., Schnader Harrison Segal & Lewis LLP, for the protester. Mark Machiedo, Esq., Department of Veterans Affairs, for the agency. Noah B. Bleicher, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging agency's evaluation of proposals is denied where protester does not demonstrate that evaluation was unreasonable or inconsistent with the solicitation.

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### DECISION

Countywide Transportation, of Yonkers, New York, protests the award of a contract to Virgo Medical Services, Inc., of East Orange, New Jersey, pursuant to solicitation No. VA243-13-R-1096, which was issued by the Department of Veterans Affairs (VA) for ambulette transportation services. Countywide objects to the evaluation of proposals, primarily the agency's determination that Virgo possesses required licenses.

We deny the protest.

### BACKGROUND

On May 13, 2013, the VA issued the request for proposals (RFP) as a small business set-aside seeking proposals for ambulette services to transport patients to the James J. Peters VA Medical Center in the Bronx, New York, and three community-based clinics. RFP at 1, 5. The RFP contemplated the award of a fixed-price, indefinite quantity contract with a 6-month period of performance. Id. at 1, 58. Offerors were advised that award would be made on a best-value basis considering price and non-price factors. Id. at 60. The solicitation identified seven evaluation factors and assigned weights to each factor as follows: technical approach (25 percent), management approach (20 percent), price/cost (15 percent),

“licensed” (15 percent), training (15 percent), and past performance (10 percent). Id. at 60-61.

With regard to the licensing factor, and as relevant here, the RFP stated, “Must maintain proper license required to provide services in the State of NY.” Id. at 60. The solicitation also advised that “Each ambulette used in conjunction with this contract shall be licensed and meet the minimum requirements as mandated by the Department of Transportation of the State of New York Rules & Regulations and covering vehicles for hire to transport handicapped individuals.” Id. at 9; see also id. at 10 (“Driver’s of each ambulette shall maintain a valid chauffeur’s license in accordance with New York regulations. . .”).

Countywide--the incumbent contractor for the ambulette services--and Virgo both submitted proposals prior to the RFP’s closing date. Agency Report (AR) at 2. Countywide proposed to perform the services for \$80,752; Virgo’s proposal was for \$139,416.30. AR, Tab H, Countywide Offer, at 3; AR, Tab I, Virgo Offer, at 4. A VA source selection evaluation board (SSEB) reviewed the proposals, and the three SSEB members assigned the proposals a numerical score of up to 10.0 under each of the factors. See AR, Tab J, SSEB Instructions, at 7-8. The raw numerical scores were multiplied by the weighted value of the factor (e.g., 15% for licensing), and a “weighted score” for each factor was calculated. The SSEB members’ weighted scores for both offerors under each factor were combined to form a total weighted score. Countywide’s total weighted score was 23.23; Virgo’s total weighted score was 28.03. AR, Tab M, Source Selection Decision Memorandum, at 1.

The source selection authority (SSA) reviewed the SSEB’s findings and performed an “independent analysis” of the information provided. Id. The SSA stated that while Countywide proposed a lower price, Virgo was rated higher in the two most important evaluation factors, technical approach and management approach. Id. at 3. Accordingly, the SSA concluded that Virgo was the “most highly rated and qualified Offeror,” and award was made to the company on May 31. Id. This protest followed.<sup>1</sup>

## DISCUSSION

Countywide objects to the agency’s evaluation of proposals. Specifically, the protester maintains that award to Virgo was improper because the firm’s vehicles and drivers do not possess New York state licenses. Protest at 8; Comments

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<sup>1</sup> Subsequent to the filing of this protest, on June 19, 2013, VA executed a memorandum overriding the automatic stay of contract performance, based upon the determination that such action was in the “best interest” of the government. AR, Tab T, Justification for Continuation of Contract Performance, at 1; see 31 U.S.C. § 3553(d)(3)(C)(i) (2013).

at 5-10. Countywide also objects to the evaluation of cost/price and past performance.<sup>2</sup> Protest at 6; Comments at 12.

In reviewing protests relating to an agency's evaluation of proposals, we will not independently reevaluate proposals; rather, we will review the record to ensure that the agency's evaluation was consistent with the terms of the solicitation and applicable statutes and regulations. Engineered Elec. Co. d/b/a/ DRS Vermont, B-295126.5, B-295126.6, Dec. 7, 2007, 2008 CPD ¶ 4 at 3-4. Mere disagreement with the agency's evaluation is not sufficient to call an evaluation into question. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

First, Countywide asserts that the agency's evaluation under the licensing factor was flawed because Virgo's proposal did not include copies of New York licenses. Comments at 6. Countywide argues that the solicitation "required New York licensing . . . for the vehicles" and that Virgo did not provide such licenses. Id.

In response to the RFP's licensing requirements, discussed above, Virgo submitted with its proposal a copy of a New Jersey Department of Health and Senior Services license, information about its fleet of vehicles, which included vehicle license plate numbers, and a list of the firm's 32 mobility assistance vehicle technicians (drivers), which included their driver license numbers. AR, Tab I, Virgo Proposal, at 17-18, 39, 42. The record shows that the agency reviewed Virgo's licensing submissions and determined that Virgo had "adequate licensing." AR, Tab M, SSA Decision, at 2; see also Supplemental AR, Tab AA, VA Email to Agency Counsel, at 1, 6 (concluding that New Jersey licensing is sufficient under the solicitation).

Based on the record here, we find nothing objectionable about the agency's determination that Virgo met the RFP's licensing requirements. In this regard, contrary to the protester's assertion, the solicitation did not require that the vehicles and drivers possess licenses issued by New York state. Rather, as explained above, the solicitation required that the offeror must maintain the licenses "required to provide services in the state of NY." RFP at 60. With regard to driver's licenses, the agency explains that the Federal Motor Carrier Safety Regulations provide for reciprocity such that a license to drive a commercial motor vehicle in one state is valid in another. See 49 C.F.R. § 383.73(I). As noted above, Virgo submitted what the agency considered to be sufficient licensing information with its proposal such that the VA was able to determine that Virgo met the solicitation's licensing

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<sup>2</sup> In its protest, Countywide also challenged the agency's evaluation of its proposal under the technical approach and management approach factors. Protest at 9. However, in its comments on the agency's report on the protest, Countywide failed to meaningfully address the agency's response to these allegations. Accordingly, we consider it to have abandoned these arguments. Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 3.

requirements. We find no basis to question the reasonableness of the agency's evaluation in that regard.<sup>3</sup> See Supp. AR at 5.

In addition to its objection to the VA's evaluation under the licensing factor, Countywide also challenges the agency's evaluation of cost/price and its assessment of past performance. Specifically, Countywide points to the "substantial price/cost savings" it offered and questions how the agency could assign the same scores to both offers under the price/cost factor.<sup>4</sup> Protest at 9; Comments at 12. The protester further contends that it is "unclear whether Countywide's price was a factor in the award." Comments at 2 n.3.

Our Office has consistently recognized that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision making in the procurement process. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7; Burchick Constr. Co., B-400342.3, Apr. 20, 2009, 2009 CPD ¶ 102 at 4-5. The evaluation of proposals and consideration of their relative merit should be based upon a qualitative assessment of proposals consistent with the solicitation's evaluation scheme, and should not be the result of a simple count of the relative strengths and weaknesses assigned to the proposals during the evaluation process. Highmark Medicare Servs., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 19.

Although we are mindful of the protester's concerns here, we do not find the agency's source selection analysis to be unreasonable. In this regard, the protester's disagreement over the actual numerical ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. See Palmetto GBA, LLC; CGS Adm'rs, LLC, B-407668 et al., Jan. 18, 2013, 2013 CPD ¶ 53 at 7. Here, the SSA decision reflects a well-documented, reasonable best value tradeoff. The decision shows that the SSA acknowledged that Virgo proposed a "significantly higher cost than Countywide," but nonetheless concluded that Virgo's technical offer provided the

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<sup>3</sup> In a related argument, Countywide also argues that Virgo's proposal did not comply with the solicitation's requirements related to vehicle inspections. Comments at 6-7. However, unlike the RFP's licensing requirement, the inspection requirements were not part of a stated evaluation factor. See RFP at 60. As such, the solicitation's inspection requirements do not affect the award decision except as a general responsibility matter. See HAP Constr., Inc., B-278515, Feb. 9, 1998, 98-1 CPD ¶ 48 at 2-3. Our Bid Protest Regulations generally preclude our review of a contracting officer's affirmative determination of an offeror's responsibility. 4 C.F.R. § 21.5(c) (2013).

<sup>4</sup> Both offers received weighted scores of 4.50 out of 4.50 for the cost/price factor. AR, Tab M, SSA Document, at 1.

best value to the VA. AR, Tab M, Source Selection Decision Memorandum, at 3. More specifically, in comparing the two proposals, the SSA stated:

[Virgo's] proposal provided detailed maintenance of vehicle fleet, [a] well documented explanation of the operation of their system . . . [and] an organizational structure with position descriptions and disciplinary processes [that] were very clear. Virgo's management approach also explained their customer service and feedback process, and also specified the frequency of drug testing. While Countywide was considered an acceptable and lower offeror, awarding to Countywide would have been too high of a risk to our veteran patients, as their proposal did not adequately address how they would manage transportation requirements once they were received from the government. Furthermore, Countywide did not clearly state details about inspections and quality controls.

Id. Notwithstanding the equal numerical scores assigned under the cost/price factor, the SSA concluded that Virgo was the most "highly rated and qualified offeror for this project." Id. On this record, we have no basis to object to the SSA's conclusion that the higher-priced offer provided the best value to the agency, particularly where, as here, cost/price was worth only 15 percent as an evaluation factor under the solicitation. See RFP at 60.

Lastly, with respect to past performance, Countywide asserts that the agency failed to evaluate the offerors' past performance and arbitrarily assigned the maximum score of 3.00 to both offerors. Protest at 4. Countywide also argues that Virgo should have received a lower score due to two marginal ratings (out of seven ratings) in one of its two past performance questionnaires. Comments at 7; see AR, Tab W, Virgo Past Performance Information, at 2. However, the protester's arguments reflect mere disagreement with the agency's judgment. Moreover, on this record, we fail to see how the questionnaire responses for Virgo would have significantly reduced its past performance score, or more importantly, influenced the award decision; as stated above, past performance was the least important evaluation factor, worth only 10 percent of the evaluation. In sum, we find that the protester's arguments provide no basis to sustain the protest.

The protest is denied.

Susan A. Poling  
General Counsel