



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: PatriotVetIT, LLC

File: B-412188.2

Date: March 23, 2016

Leonard Hawrilenko for the protester.

Paul K. Petraborg, Esq., Department of Veterans Affairs, for the agency.

Susan K. McAuliffe, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's proposal and selection of higher-priced, higher technically rated proposal is denied where evaluation and selection were reasonable and in accordance with the solicitation evaluation criteria.

DECISION

PatriotVetIT, LLC, a service-disabled, veteran-owned, small business, of Sarasota, Florida, protests the award of a contract to Dockside Imaging, LLC, of Mt. Pleasant, South Carolina, under request for proposals (RFP) No. VA263-15-R-0451, issued by the Department of Veterans Affairs (VA), for mobile magnetic resonance imaging (MRI) services. PatriotVetIT argues that the agency misevaluated its technical proposal and past performance.

We deny the protest.

BACKGROUND

The RFP, issued on August 3, 2015, as a service-disabled, veteran-owned, small business set-aside, sought proposals for the award of an indefinite-delivery, indefinite-quantity contract for mobile MRI services. RFP at 1, 57, and 61. The RFP set out three factors for award: (1) technical capability; (2) past performance, and (3) price. Id. at 57. Award was to be made to the offeror that submitted the proposal deemed to present the best value. Id. at 58. The RFP instructed offerors to provide sufficient detail in their proposals to allow for the evaluation of technical capability. Id. at 57. With regard to past performance, the RFP instructed offerors

to demonstrate experience with their offered product, and advised that such experience performed at VA facilities was preferred. Id.

The agency received six proposals by the RFP's September 1 closing date. PatriotVetIT's proposal, priced at \$2,488,320, received a "Borderline" rating for technical capability and a "Neutral" rating for past performance. Contracting Officer (CO) Statement at 2. Dockside, the incumbent contractor, submitted a proposal priced at \$2,964,600, which received a "Superior" rating for technical capability and an "Acceptable" rating for past performance. Id. Concluding that the technical superiority of the Dockside proposal was worth the associated price premium, the contracting officer awarded the contract to that firm. The agency, however, cancelled that award as a consequence of a protest filed by PatriotVetIT, re-evaluated the protester's proposal, and affirmed the selection decision, which resulted in a new award to Dockside.¹ This protest followed.

DISCUSSION

PatriotVetIT challenges the agency's evaluation of its technical proposal, arguing that its proposed MRI equipment is "state of the art" and superior to the one proposed by Dockside. Protest at 1-3. The protester also challenges its "Neutral" rating, arguing that its past performance is in fact "exemplary." Protest at 2.

In reviewing a protest against the propriety of an evaluation, it is not our function to independently evaluate proposals and substitute our judgment for that of the contracting activity. Barents Group, L.L.C., B-276082, B-276082.2, May 9, 1997, 97-1 CPD ¶ 164 at 6. Rather, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation and applicable procurement statutes and regulations; a protester's disagreement with the evaluation does not show it lacked a reasonable basis. Id.

An offeror has the burden of affirmatively demonstrating the merits of its proposal and risks lower evaluation ratings, or proposal rejection, if it fails to do so. See HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. No matter how competent a vendor may be, the technical evaluation of its proposal must be based

¹ On September 29, 2015, PatriotVetIT protested the agency's previous evaluation of its proposal, and selection of Dockside for the award. On October 30, the agency informed our Office that it was taking corrective action by canceling the award and re-evaluating the protester's proposal. Accordingly, on November 3, we dismissed the protest as academic. PatriotVetIT, LLC, B-412188, Nov. 3, 2015 (unpublished decision). PatriotVetIT's current protest challenges the propriety of the re-evaluation of its proposal, and the agency's decision to again select Dockside for award.

on the information included in the firm's proposal. See Watson Indus., Inc., B-238309, Apr. 5, 1990, 90-1 CPD ¶ 371 at 3-4.

The RFP, among other things, required sufficiently detailed technical proposals, including a description of proposed mobile MRI equipment, for the evaluation of technical capability. In this regard, the agency reports, and the record reflects, that PatriotVetIT's proposal contained specifications for an older MRI model, to include an older version of required software. Memorandum of Law at 1-2; PatriotVetIT Technical Proposal, Unit Profile. Although the protester's proposal generally represented that the MRI equipment would be upgraded to 2015 specifications, the proposal failed to provide any details regarding the proposed upgrades. Id. Given the lack of detail regarding the anticipated upgrades referenced in PatriotVetIT's proposal, we conclude that it was not improper or otherwise unreasonable for the agency to have evaluated the older equipment actually described in the protester's proposal.

In rejecting the protester's arguments, we find that PatriotVetIT has not demonstrated that its equipment is the most "state-of-the-art," as it claims it to be. Protest at 3. Rather, the agency reports that during its re-evaluation of the protester's proposal, the agency contacted the MRI equipment manufacturer (of both the protester's and awardee's equipment) and obtained confirmation that the MRI equipment Dockside proposed was an updated model leading to the agency's conclusion that Dockside's proposed equipment was more "state-of-the-art" than PatriotVetIT's. Addendum to Source Selection Decision Document. The protester provides no persuasive basis to challenge this finding.²

Further, while PatriotVetIT generally protests its "Neutral" rating under the past performance factor, the protester has not provided support for its contention that the proposal should have been rated higher. For instance, although the protester generally states that the agency should have been able to find positive past performance information for PatriotVetIT in the government's past performance records, the protester provides no documentation of such records to refute the findings of the underlying evaluation indicating that the agency was unable to locate a record of past performance ratings for PatriotVetIT in the Past Performance Information Retrieval System. Source Selection Decision Document at 5.

² To the extent the protester submitted information from the equipment manufacturer comparing a newer model MRI product with the awardee's equipment, the comparison is not relevant since the protester has not shown that it in fact offered that newer model MRI equipment. As noted above, the protester's proposal provided detailed information with respect to an older model MRI product. While the proposal generally represented that it would be upgraded to 2015 standards, as previously explained, the proposal failed to provide any details of the anticipated upgrades.

Additionally, as noted above, the RFP required offerors to submit past performance information demonstrating their performance with respect to their proposed MRI product and set out a preference for such experience at VA facilities. As the protester itself points out, its proposal identified a single contract with the Air Force reflecting 1 year of mobile MRI contract performance. The record indicates that the proposal did not identify the dollar value of the contract or indicate that PatriotVetIT was using the product identified in its technical proposal in the performance of that contract. The record also reflects that the protester's VA-related contracts did not involve MRIs; rather, they were for other types of imaging equipment. PatriotVetIT Proposal, Past Performance Summary. Accordingly, the record provides no basis to sustain the protest, particularly given the unchallenged strength of Dockside's favorable VA-related past performance.³

The protest is denied.

Susan A. Poling
General Counsel

³ To the extent the protester contends that the evaluation was improper for noting a lack of consultative services, our review of the contemporaneous evaluation record does not show that the firm's proposal was assessed a weakness in this area. Further, to the extent such notation was recorded in the evaluation record, we need not review the matter since the same notation was recorded for Dockside as well; consequently, the protester has not shown the requisite competitive prejudice necessary to maintain its challenge. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. We also find unreasonable the firm's contention that its proposed sample qualifications for unidentified future hires should have received as much evaluation credit as Dockside's technically superior proposal of clearly identified, committed, and credentialed incumbent personnel.