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Decision

Matter of: Primary Care Solutions, Inc.

File: B-418799.3; B-418799.4

Date: September 8, 2021

John A. Knab, Esq., Foster Garvey, for the protester.
Michelle E. Litteken, Esq., C. Kelly Kroll, Esq., and Andrew J. Mohr, Esq., Morris, Manning & Martin, LLP, for Clinovators, LLC, the intervenor.
Deborah K. Morrell, Esq., Department of Veterans Affairs, for the agency.
Charmaine A. Stevenson, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of proposals as unreasonable and disparate, and challenging the source selection decision, is denied where the record shows that the evaluation and selection decision were fair, reasonable, and consistent with the terms of the solicitation.
 2. Protest that the agency unreasonably declined to consider the protester's alternate price proposal is denied where the proposal failed to comply with the requirements of the solicitation.
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DECISION

Primary Care Solutions, Inc. (PCS), a service-disabled veteran-owned small business (SDVOSB) of Dallas, Texas, protests the award of a contract to Clinovators, LLC, also an SDVOSB of Dallas, Texas, under request for proposals (RFP) No. 36C25718R0842, issued by the Department of Veterans Affairs (VA), for a community-based outpatient clinic (CBOC) in Northwest San Antonio, Texas. The protester contends that the agency's evaluation of proposals was unreasonable and disparate; the agency failed to evaluate PCS's alternate price proposal in violation of the RFP and regulation; and the source selection decision was flawed.

We deny the protest.

BACKGROUND

The RFP, issued on January 15, 2020, using the combined procedures of Federal Acquisition Regulation (FAR) parts 12 and 15, contemplated the award of an indefinite-delivery indefinite-quantity contract, with a period of performance consisting of a 1-year base period and four 1-year option periods. Agency Report (AR), Tab 3, RFP at 1, 166. The maximum contract amount is \$35 million. AR, Tab 4, RFP amend. 0006 at 1.

The RFP included the following evaluation factors: technical capability, past performance, and price. RFP at 168-171. The technical capability factor included the following subfactors, which the RFP stated were of equal importance: quality; management, experience, staffing, and transition plan; and geographic location. *Id.* at 168-170. For the factors, the RFP stated that the technical capability factor was significantly more important than price, past performance was significantly less important than price, and the non-price factors combined were more important than price. *Id.* at 168.

The agency received proposals from PCS and Clinovators. See Contracting Officer's Statement (COS) at 2-3. The agency initially selected Clinovators for award, and PCS filed a protest with our Office. *Id.* at 1. In response to the protest, the agency took corrective action and stated that it would terminate the award, reevaluate technical proposals, and make a new award decision; accordingly we dismissed the protest as academic. *Primary Care Solutions, Inc.*, B-418799.2, Apr. 21, 2021 (unpublished decision).

The technical evaluation board (TEB) performed a reevaluation of the proposals, identified strengths and weaknesses, and assigned subfactor and factor ratings. AR, Tab 9C, PCS TEB Reevaluation Report; Tab 9D, Clinovators TEB Reevaluation Report. The TEB's evaluation was considered by the contracting officer, who also served as the source selection authority (SSA) and performed an independent review of the strengths and weaknesses of each offeror's proposal. AR, Tab 12, Source Selection Decision Document (SSDD) at 10. The SSA concluded that some of the weaknesses identified by the TEB in its evaluation of PCS were not weaknesses at all, and increased PCS's quality subfactor and technical capability factor ratings from acceptable to good.¹ *Id.* at 7; see *also* Tab 9C, PCS TEB Reevaluation Report at 1-2. The SSA's final evaluation of proposals was as follows:

¹ A rating of good was defined as follows: "Proposal demonstrates good understanding of requirements and approach that *exceeds* performance or capability standards. Have one or more strengths that will benefit the Government." AR, Tab 12, SSDD at 9.

	PCS	Clinovators
Technical Capability	Good	Good
Quality	Good	Good
Management/Experience/Staffing/Transition Plan	Good	Good
Geographic Location	Good	Good
Past Performance	Very Low Risk	Unknown Risk
Price	\$28,691,615	\$27,385,413

AR, Tab 12, SSDD at 2, 7.

On May 25, the agency notified PCS that a contract was awarded to Clinovators, and provided a written debriefing to PCS later that day. This protest followed.

DISCUSSION

The protester challenges multiple aspects of the agency's evaluation and selection decision. Although we do not specifically address every argument or variation of PCS's allegations, we have considered all of them and find they provide no basis on which to sustain the protest.²

Technical Capability Evaluation

The protester argues that the agency's evaluation under the technical capability factor was both unreasonable and disparate. First, PCS argues that the evaluation was unreasonable because the agency erroneously identified weaknesses in its proposal, and failed to properly identify strengths associated with PCS's accreditation by The

² On July 12, 2021, PCS filed a supplemental protest raising additional challenges to the evaluation of Clinovators' proposal and the selection decision. Our Office requested the agency to file a supplemental report by close of business on July 20, and the protester to file its comments responding to the agency's supplemental report by close of business on July 23. Electronic Protest Docketing System (EPDS) No. 19. The agency filed a supplemental report on July 20. EPDS No. 23. However, PCS did not file its supplemental comments until July 30. EPDS No. 27. Our Bid Protest Regulations state that a protester's failure to file comments within the period of time established "shall" result in dismissal of the protest. 4 C.F.R. § 21.3(i)(2). Our Regulations do not provide exceptions to the requirement to file comments on time, and the protester here did not request an extension of the due date. *California Env'tl. Eng'g*, B-274807, B-274807.2, Jan. 3, 1997, 97-1 CPD ¶ 99 at 5-6; *see also Aspen Consulting, LLC*, B-405778.2, Mar. 19, 2012, 2012 CPD ¶ 117 at 1 (protest dismissed where comments were not filed by due date). Accordingly, we dismiss PCS's supplemental protest.

Joint Commission (TJC).³ Protest at 13-14. The agency argues that the evaluation was fair, reasonable, and consistent with the RFP. Memorandum of Law (MOL) at 3-10.

When reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. *Del-Jen Educ. & Training Group/Fluor Fed. Solutions LLC*, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. *Id.* An offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *KSC BOSS Alliance, LLC*, B-416334, B-416334.2, July 27, 2018, 2018 CPD ¶ 267 at 5.

In addition, offerors are responsible for submitting a well-written proposal with adequately detailed information that clearly demonstrates compliance with the solicitation and allows for meaningful review by the procuring agency. *Raytheon Co.*, B-416578, B-416578.2, Oct. 22, 2018, 2018 CPD ¶ 376 at 12. Agencies are not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. *Id.*

Here, as noted, the technical capability factor included three subfactors: quality; management, experience, staffing, and transition plan; and geographic location. RFP at 168-170. For the quality subfactor, the RFP included the following instructions:

1. Provide results of latest Joint Commission accreditation including date and recommendations. If not accredited, provide evidence of a working knowledge of applicable Joint Commission regulations and ability to meet requirements. Provide date of last survey, expiration date of present accreditation, and date of next survey. Indicate any conditions to accreditation.
2. Describe the performance measurement process that will be implemented to monitor[:]
 - appropriateness of care
 - access
 - patient satisfaction
 - quality
3. Describe procedures to be implemented for accountability and safeguarding of medications provided by the Parent Facility.

³ The Joint Commission is an independent, not-for-profit organization that sets safety and quality standards for patient care, and certifies and accredits healthcare institutions and programs across the United States. See <https://www.jointcommission.org/about-us/facts-about-the-joint-commission/> (last visited Sept. 3, 2021).

4. If contractor is not accredited by the Joint Commission, Contractor shall provide Infection Control Plan, Blood borne Pathogen Plan and Tuberculosis Control Plan.

Id. at 169. In its evaluation of PCS's proposal, the TEB identified four strengths, including a strength for PCS's TJC accreditation. AR, Tab 9C, PCS TEB Reevaluation Report at 4. The TEB also identified the following weaknesses: (1) a lack of description of safeguarding of medication; (2) no bus stops near the proposed CBOC; (3) no tuberculosis or blood borne pathogens plans; and (4) no COVID-19 control plan. *Id.* The TEB assigned PCS a rating of acceptable under the quality subfactor, and an overall technical capability rating of acceptable. *Id.* at 1-2.

However, as noted, the SSA independently reviewed the TEB's evaluation, and increased both of these ratings to good. Specifically, the SSA identified six strengths in PCS's proposal, including a strength for PCS's TJC experience and accreditation. AR, Tab 12, SSDD at 7. Further, the SSA concluded that the lack of a bus stop near the proposed CBOC was not a weakness because, based on the SSA's research, "the proposed facility is approximately 3 to 4 minutes from two nearby bus stops and approximately an [8-minute] walk to the nearest medical center transit station." *Id.* The SSA also concluded that due to PCS's TJC accreditation status, the RFP did not require PCS to provide tuberculosis or blood borne pathogens plans, or a COVID-19 control plan, and thus PCS should not be assessed weaknesses for failing to separately provide these plans. *Id.*

Nonetheless, the SSA agreed with the TEB and considered as a weakness that PCS "did not provide procedures to be implemented for accountability and safeguarding medications," because it was required by the RFP regardless of an offeror's TJC accreditation. *Id.*; RFP at 169. In this regard, the agency notes, and our review confirms, that PCS's proposal "merely mentions medication management under its TJC accreditation description as part of its patient-focused function; there are no details provided or discussion of this separate solicitation requirement." MOL at 4 n.6; see AR, Tab 5, PCS Proposal at 7-8.

We find the evaluation of PCS's proposal to be reasonable. Although the RFP did not require that offerors with TJC accreditation include certain information in their proposals (e.g., blood borne pathogen plan), the RFP expressly required that all offerors describe procedures to be implemented for accountability and safeguarding of medications, and PCS did not provide this information in its proposal. Further, the record shows that PCS's TJC accreditation was considered a strength, and the SSA did not consider the remaining weaknesses identified by the TEB to be weaknesses. Thus, we find reasonable the assessment of a weakness to PCS's proposal for failing to provide a plan for the safeguarding of medications, and the SSA's rating of PCS as good under the quality subfactor and technical capability factor.

The protester also argues that the agency's evaluation was disparate, and far more lenient for Clinovators' proposal. Protest at 14-15. Specifically, PCS argues that rating

both offerors as good under the management, experience, staffing, and transition plan subfactor is not credible because PCS is a TJC-accredited contractor operating five CBOCs, whereas Clinovators is an inexperienced contractor, as evidenced by the neutral rating assigned for Clinovators under the past performance factor. *Id.*

Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. *Wellpoint Military Care Corp.*, B-415222.5, B-415222.8, May 2, 2019, 2019 CPD ¶ 168 at 11. PCS has not made the requisite showing that the agency treated the two proposals unequally. See *Alphaport, Inc.*, B-414086, B-414086.2, Feb. 10, 2017, 2017 CPD ¶ 69 at 7. Specifically, PCS has not shown that Clinovators received credit or that PCS was penalized for an aspect of the proposals that was the same, or substantially similar; to the extent the protester contends that it should have been more highly rated than Clinovators under the management, experience, staffing, and transition plan subfactor, this argument amounts to disagreement with the agency's evaluation of proposals, which does not make the evaluation unreasonable. *KSC BOSS Alliance, LLC, supra.*

For the management, experience, staffing, and transition plan subfactor, the RFP required that offerors provide various information, as follows:

1. Describe methods for scheduling appointments, means of scheduling staff, and other factors to provide adequate, timely access/service for patients.
2. Describe the Offeror's length and breadth of experience in providing healthcare, coordination and Continuity of Care: Describe the ability to provide the full range of services covered under this solicitation.
3. Provide an organization chart of personnel involved in the performance of this contract. This chart shall clearly show organizational relationships, lines of authority and responsibility, as well as span of control.
4. Describe your organization structure and management practices relative to the requirements contained in this solicitation.
5. Provide a contingency plan for staffing clinic(s) in the event of absence of regularly scheduled staff.
6. Describe the capability to recruit adequate staffing to meet the needs of this contract.
7. Provide a transition plan covering a phase-in period prior to assuming responsibility under the contract. . . .

RFP at 169. Under the past performance factor, the RFP required that offerors identify three current or recently completed contracts similar in scope and value to the RFP requirements, and reserved the right to obtain information from any available source. *Id.* at 170-171. The RFP further stated: "In accordance with FAR 15.305(a)(2)(iv), if an offeror has no record of relevant past performance or for whom information is not available, they will not be rated favorably or unfavorably." *Id.* at 171.

In the evaluation of Clinovators's proposal, both the TEB and the SSA identified multiple strengths, and assigned ratings of good under the management, experience, staffing, and transition plan subfactor and the technical capability factor. AR, Tab 9D, Clinovators TEB Reevaluation Report at 4; Tab 12, SSDD at 5. The TEB and SSA also identified as a weakness that Clinovators did not possess a TJC accreditation, but nonetheless concluded that Clinovators's proposal provided a plan to meet TJC standards; clinical and operational staff that would adhere to TJC policies and procedures; and a quality team to review the 15 most frequent patient diagnoses and develop baseline metrics for those clinical measures. *Id.*

Under the past performance factor, Clinovators was assigned a rating of "neutral/unknown risk," based on the fact that Clinovators's past performance consisted of a single contract for a CBOC in Beeville, Texas, awarded in 2020, that was terminated "for the Government's convenience, at no fault of the contractor, prior to any services being rendered." AR, Tab 12, SSDD at 5.

Generally, an agency's evaluation under an experience factor is distinct from its evaluation of an offeror's past performance. *Commercial Window Shield*, B-400154, July 2, 2008, 2008 CPD ¶ 134 at 3. Specifically, the former focuses on the degree to which an offeror has actually performed similar work, whereas the latter focuses on the quality of the work. *See id.* Where a solicitation calls for the evaluation of experience and past performance, we will examine the record to ensure that the evaluation was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. *Amyx, Inc.*, B-410623, B-410623.2, Jan. 16, 2015, 2015 CPD ¶ 45 at 14.

Here, consistent with the terms of the solicitation, the evaluation of experience was only one of several elements to be considered in the assessment of proposals under the management, experience, staffing, and transition plan subfactor. RFP at 169. The record shows that Clinovators included in its proposal information as required for offerors without TJC accreditation, and the agency identified multiple strengths in its assessment of Clinovators's proposal and assigned ratings of good, despite the fact that the lack of TJC accreditation was considered to be a weakness. AR, Tab 9D, Clinovators TEB Reevaluation Report; see Tab 7, Clinovators Technical Proposal. Separately, and also consistent with the RFP and the FAR, the agency concluded that Clinovators lacked relevant past performance and assigned a neutral rating of unknown risk under the past performance factor. On this record, we find the agency's evaluation of Clinovators's proposal was reasonable, and find no basis to conclude that the agency treated the offerors disparately.

Alternate Price Proposal

The protester also argues that the agency violated the RFP and the FAR by failing to evaluate PCS's alternate price proposal, which was only slightly higher priced than Clinovators's proposal. PCS argues that it was unreasonable for the agency not to consider its lower priced alternate proposal, which [DELETED] to provide savings to the

agency. Protest at 16-18. The agency argues that PCS's alternate price proposal failed to comply with the RFP's pricing instructions, therefore the agency appropriately declined to consider it. MOL at 10, 12-14.

In reviewing protests challenging the rejection of a proposal for consideration for award, it is not our role to reevaluate proposals; rather our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the solicitation criteria and applicable procurement statutes and regulations. *RCG of North Carolina, LLC*, B-418824, B-418824.3, Sept. 17, 2020, 2020 CPD ¶ 298 at 5. In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. *Id.*; *Wolverine Servs. LLC*, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 5. As stated, it is the offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *Raytheon Co.*, *supra*.

As relevant to the protester's argument, the RFP incorporated FAR provision 52.212-1, which in pertinent part, states as follows:

(e) Multiple offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions, including alternative line items (provided that the alternative line items are consistent with subpart 4.10 of the Federal Acquisition Regulation), or alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

RFP at 1. However, regarding price proposals, the RFP instructed offerors to submit their prices using the price schedule included in the solicitation. *Id.* at 171. The RFP stated that prices "shall be listed as an all-inclusive per member per month rate for services under each [contract line item number (CLIN)]. If needed calculate the [build-out] into [CLIN] 0001." *Id.* The price schedule identified five CLINs for primary care services at capitation rates per member per month; CLIN 0001 was for the base year of performance and CLINs 1001, 2001, 3001, and 4001 were for each option year. RFP amend. 0005 at 2.

PCS submitted an alternate price proposal that, in addition to the CLINs identified in the RFP's price schedule, included [DELETED]." AR, Tab 6B, PCS Alternate Price Proposal at 2-3. The agency did not consider PCS's alternate price proposal "because it created its own CLIN structure and did not follow the CLIN structure of the solicitation." AR, Tab 12, SSDD at 8. The SSA further explained as follows:

Although FAR 52.212-1(e), encourages offerors to submit multiple offers presenting alternative terms and conditions, including alternative line items, the preferred method for VA is to include the build-out/start-up costs into CLIN 0001 and not individual start-up CLINs as provided in the PCS

proposal two. Further, [FAR] 52.212-2 paragraph 3, states that offerors shall submit their price using the schedule of services continuation section (Price Schedule) from the posted solicitation and PCS deviated from this in their second price proposal.

Id.

We find the agency's decision not to consider PCS's alternate price proposal to be reasonable. Although the RFP, by incorporating FAR provision 52.212-1, required that the agency consider multiple offers, there is no requirement that an agency consider a proposal that does not otherwise conform to the requirements of the solicitation. To the contrary, FAR provision 52.212-1 also requires that offers be submitted "as otherwise specified in the solicitation," and further states that "Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration." FAR provision 52.212-1(b). Here, the RFP expressly required that the price schedule be used, and that if necessary, build-out costs be included in CLIN 0001. On this record, we find that PCS's alternate price proposal did not conform to the pricing terms of the solicitation, accordingly the agency was not required to consider it.⁴ *Ahtna-RDI JV, Inc.*, B-418012.6, B-418012.7, Jan. 5, 2021, 2021 CPD ¶ 14 (protest denied where proposal was ineligible for award because it failed to comply with requirements to complete the price schedule as required by the solicitation).

Source Selection Decision

Finally, the protester argues that the source selection decision deviated from the best-value award criteria stated in the RFP, and considered only the awardee's lower price when making award rather than performing a best-value tradeoff. Protest at 15-16. The protester further argues that the source selection decision is unreasonable and erroneous because it is based on a flawed evaluation. *Id.* at 18.

As a general matter, source selection officials enjoy broad discretion in making tradeoffs between the comparative merits of competing proposals in a best-value evaluation scheme; such tradeoffs are governed only by the test of rationality and consistency with the solicitation's evaluation criteria. *Qwest Gov't Servs., Inc. d/b/a Centurylink QGS*, B-416658.4, B-416658.5, June 17, 2019, 2019 CPD ¶ 220 at 12.

Here, the RFP stated that a contract would be awarded to "the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered." RFP at 168. The technical capability factor was significantly more important than cost or price, the past performance factor

⁴ To the extent that PCS argues that the lower price of its alternate proposal demonstrates that it would be more advantageous for the agency to permit [DELETED] costs as has been done in other procurements, we find that this argument constitutes an untimely challenge to the terms of the solicitation. 4 C.F.R. § 21.2(a)(1).

was significantly less important than cost or price, and combined the non-price factors were more important than cost or price. *Id.*

As discussed, the SSA independently reviewed the strengths and weaknesses of both proposals, and rated them both as good under the technical capability factor. The SSA concluded that “both [PCS and Clinovators] appear capable of providing the CBOC requirement.” AR, Tab 12, SSDD at 11. The SSA further “acknowledged that [Clinovators] did not have past performance experience,” and indicated that the agency had received a Certificate of Competency from the Small Business Administration for Clinovators to perform the contract. *Id.* at 2, 11; Tab 11A, Clinovators Certificate of Competency for Solicitation 36C25718R0842. The SSA concluded that because both offerors were rated as good, and Clinovators’s price proposal was approximately \$1.3 million less than PCS’s price proposal, Clinovators provided the overall best value and tradeoffs were not necessary. AR, Tab 12, SSDD at 11.

Because we have denied the protester’s challenges to the evaluation of proposals, we find no merit to the protester’s challenges to the selection decision. Contrary to the protester’s argument, the fact that the SSA concluded that no tradeoffs were necessary does not negate that the award was made on a best-value basis. See *Savvee Consulting, Inc.*, B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 7 (protest that the agency improperly made award on a lowest-price, technically acceptable basis, where the solicitation provided for award on a best-value basis, is denied where the record shows that the agency reasonably found the protester’s and awardee’s quotations to be technically equal and selected the lower-priced quotation); *The MIL Corp.*, B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 14 (same).

We find the SSA’s selection of Clinovators’ proposal, based on its lower proposed price and despite its lack of relevant past performance, to be reasonable and consistent with the award criteria as stated in the RFP. On this record, we find that the SSA considered the offerors’ technical capability to be essentially equal, and price became the discriminating factor when selecting Clinovators for award. Accordingly, we find no basis to conclude that the source selection decision deviated from the award criteria stated in the RFP or is otherwise flawed.

The protest is denied.

Edda Emmanuelli Perez
General Counsel