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Decision

Matter of: Dentrust Dental International, Inc.

File: B-419054.2; B-419054.3

Date: April 6, 2021

Edward Tolchin, Esq., Offit Kurman, for the protester.
Elizabeth N. Jochum, Esq., and Nora K. Brent, Esq., Smith Pachter McWhorter PLC, for Comprehensive Health Services, LLC, the intervenor.
Ross Boone, Esq., Department of Homeland Security, for the agency.
Christine Milne, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably evaluated the protester's proposal is denied where the record shows that the evaluation was reasonable and in accordance with the terms of the solicitation and applicable procurement laws and regulations.

DECISION

Dentrust Dental International, Inc., d/b/a Dentrust Optimized Care Solutions (DOCS), of Pipersville, Pennsylvania, protests the award of a contract to Comprehensive Health Services, LLC, (CHS) of Reston, Virginia, under request for proposals (RFP) No. 70B06C20R00000044, issued by the Department of Homeland Security (DHS), Customs and Border Protection (CBP), for comprehensive medical consultation and support services. The protester primarily argues that the agency unreasonably evaluated its technical and management approach and its past performance.

We deny the protest.

BACKGROUND

The RFP, issued on August 18, 2020, anticipated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract to obtain a variety of services related to recruitment, retention, and workplace wellness. Agency Report (AR), Tab 6, RFP, amend. 5 at 7; AR, Tab 7, Statement of Work (SOW) at 4. These services include pre-employment medical fitness scheduling and testing, consultations regarding employee fitness qualifications, and operation of a drug free workplace program, and will be used to support both CBP's Medical and Fitness Branch and its Hiring Center. AR, Tab 7,

SOW at 4. The contract is to be performed over a 1-year base period, four 1-year option periods, and one 6-month optional extension. RFP, amend. 5 at 11, 40.

Award would be made to the offeror whose proposal provided the best value considering four evaluation factors: technical and management approach, past performance, small business utilization plan, and price. *Id.* at 74. The technical and management approach factor was comprised of two subfactors: technical and management approach overview (subfactor A) and oral presentation (subfactor B). *Id.* The overview subfactor included six elements, and the oral presentation subfactor included five technical problems, discussed as relevant below. *Id.* at 67-68.

The solicitation provided for a two-phase evaluation process. Phase I included evaluating proposals under the technical and management approach overview subfactor, and under the past performance factor. *Id.* at 76. Following the phase I evaluation, each offeror would receive notice regarding whether it would be invited to participate in phase II. *Id.* Phase II included evaluating proposals under the oral presentation subfactor of the technical and management approach factor, and under the small business utilization plan factor, and by conducting a best-value tradeoff analysis. *Id.* The evaluation of price would occur separately. *Id.* at 76-77.

The technical and management approach factor was the most important, and its subfactors were equally important. *Id.* at 78. The past performance, small business utilization plan, and price factors were of lesser importance; past performance was more important than the small business utilization plan factor and price. *Id.* Price was the least important factor and, the non-price factors combined were significantly more important than price. *Id.* For the non-price factors, proposals would be evaluated as high confidence, some confidence, or low confidence. *Id.* at 75.

The agency received three phase I proposals, including those from DOCS and CHS, by the September 21 closing date. Contracting Officer's Statement (COS) at 2. The technical evaluation team (TET) concluded the phase I evaluations and both DOCS and CHS proceeded to phase II, with the following evaluation results:

	Technical and Management Approach	Past Performance	Small Business Utilization Program	Price
DOCS	Some Confidence	Some Confidence	High Confidence	\$116,039,364
CHS	High Confidence	High Confidence	Some Confidence	\$134,583,238

AR, Tab 18, Source Selection Decision and Business Clearance Memorandum at 19.

In his source selection decision, the source selection authority (SSA) explained that, in the two most important factors, CHS received high confidence ratings whereas DOCS received only a rating of some confidence. *Id.* CHS was rated some confidence under

the small business utilization plan factor, as opposed to DOCS's rating of high confidence, but this was the least important non-price factor. *Id.* The SSA also noted that CHS provided a detailed methodology for its technical approach as compared with DOCS, whose proposal lacked detail in a number of ways, including in its oral presentation, its methodology for addressing challenges, and its staffing plan. *Id.* DOCS's price was about 14 percent lower than that of CHS, but all non-price factors were significantly more important than price. *Id.* at 19-20. Given the technical superiority of the CHS proposal, and that the price of the proposal was below the government estimate, the SSA concluded that CHS offered the best value. *Id.* at 20. On December 2, DOCS received notice that CHS had been awarded the contract. COS at 3. This protest followed.

DISCUSSION

DOCS argues that the agency unreasonably evaluated its proposal under the technical and management approach and past performance factors.¹ We address each in turn.

Technical and Management Approach

DOCS argues that the agency unreasonably evaluated its proposal under both subfactors of the technical and management factor. We have reviewed all of DOCS's allegations, and conclude that none provide us a basis to sustain the protest. We discuss the principal allegations below, but note that in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. *Johnson Controls Security Solutions*, B-418489.3, B-418489.4, Sept. 15, 2020, 2020 CPD ¶ 316 at 4. To the extent we do not discuss any particular allegation, it is denied.

Subfactor A: Technical and Management Approach Overview

Under the technical and management approach factor's overview subfactor, offerors were to provide information sufficiently specific, detailed and complete as to clearly and fully demonstrate a thorough understanding of the RFP's requirements. RFP, amend. 5

¹ DOCS also argues that CHS cannot meet a contract requirement that the "Contractor shall not input, store, process, output, and/or transmit sensitive information within a Contractor [information technology] system without an Authority to Operate (ATO)." RFP, amend. 5 at 23. However, solicitation provisions that require the contractor to obtain all necessary licenses, permits, or certifications needed to perform the work establish performance requirements that do not have to be met prior to award; consequently, whether the awardee ultimately satisfies this requirement is a matter of contract administration which our Office will not review. See *McLaurin Gen. Maint., Inc.*, B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 9.

at 67. The agency identified various aspects of DOCS's proposal that either raised or lowered the agency's expectation that the firm would be successful under various elements. AR, Tab 15, DOCS Phase I Evaluation at 3-4.

The first of the six elements under the overview subfactor required offerors to outline their relevant capabilities and expertise, and to describe the people, processes, tools and techniques, and infrastructure they will provide. RFP, amend. 5 at 67. This element also required offerors to describe how their approach will reduce program risk and benefit the agency. *Id.* The agency recorded three concerns related to this element in evaluating DOCS's proposal. AR, Tab 15, DOCS Phase I Evaluation at 3.

In the section of its proposal addressing this element, DOCS cited its experience performing a 66-month contract for DHS, Immigration and Customs Enforcement (ICE). The proposal stated that this contract required the contractor to provide [DELETED] pre-employment medical and psychological examinations, [DELETED] physical fitness tests, [DELETED] pre-employment drug tests, and other examinations and tests, on an annual basis. AR, Tab 9, DOCS Proposal Vol. I, Technical Approach at 5-6. The agency credited the firm with this experience but was concerned that the contract anticipated here would require a much higher volume of services. AR, Tab 15, DOCS Phase I Evaluation at 3. One TET member states that the proposal was unclear as to whether this volume of services was what the firm had contracted to complete or what it had actually completed. AR, Tab 3, TET Member Statement at 3. Another TET member stated that it was unclear whether DOCS was performing this volume on an annual basis or over the life of the contract since the firm's past performance proposal, evaluated at the same time as the technical and management approach overview proposal, stated that it would provide "up to" this volume over the life of the contract.² AR, Tab 4, TET Member Statement at 3-4.

DOCS argues that the agency mistakenly concluded that the volume of services performed under DOCS's prior contract was the volume over the course of the contract, rather than the volume of services provided annually. Protest at 4. DOCS also argues that the agency improperly utilized the task order volume from the ICE contract to judge its capabilities instead of considering its full capability, and points to a prior contract with

² DOCS also argues that the record lacks contemporaneous documentation to support the evaluation, and that two post-protest statements from TET members should be discounted. Comments & Supp. Protest at 1, 6-10. We do not agree. The record amply documents the evaluation of the protester's proposal. See AR, Tab 15, DOCS Phase I Evaluation; Tab 16, DOCS Phase II Evaluation; Tab 17, DOCS Oral Presentation Minutes; and Tab 18, Source Selection Authority Decision and Business Clearance Memorandum. As for the two post-protest statements, although we will afford greater weight to the contemporaneous record, we will also consider post-protest explanations such as these that provide a more detailed rationale or fill in unrecorded details. *Deep Space Sys.*, B-417714, Sept. 26, 2019, 2019 CPD ¶ 347 at 8, n.8.

the Texas Army National Guard that, it asserts, should have been given greater weight. *Id.* at 5.

The agency counters that it did not misinterpret DOCS's proposal; in fact, the agency asked ICE whether the services DOCS provided were on an annual basis, and ICE confirmed that they were not. AR, Tab 4, TET Statement at 3-4. Further, the agency argues that DOCS indicated in its own proposal that it provided services "up to" the levels it identified under its prior 66-month contract, and that the agency had reasonable concern that the firm might not be able to provide the volume of services required here. AR, Tab 13, DOCS Volume II, Past Performance Proposal at 11. The agency explains that it gave greater weight to DOCS's prior performance of the ICE contract than it gave to the prior performance of the Army National Guard contract because the services provided to ICE were much more similar to the services required here. The agency concluded that the services DOCS provided for the Army National Guard did not appear to include consultations, fitness tests, or nationwide/international network availability, and only included services provided in Texas. *Id.* at 17.

DOCS has given us no basis to question the evaluation. The agency is in the best position to judge what its needs are under the contract and we will not disturb that judgement absent a showing that its evaluation was unreasonable. *Environmental Chemical Corp.*, B-416166.3, *et al.*, June 12, 2019, 2019 CPD ¶ 217 at 7. Here, the agency anticipates a much higher volume of services than DOCS has previously handled, and the agency wanted confidence that DOCS would be able to manage this volume effectively.

Another agency concern was that DOCS provided no specific information on how pre-employment fitness testing was to be scheduled and executed. AR, Tab 15, DOCS Phase I Evaluation at 3. A TET member states that although the proposal referenced these tests, it provided no detailed methodology with regard to their scheduling, administration, rating, and transmittal. AR, Tab 3, TET Member Statement at 3. This evaluator noted that while the SOW provided detailed requirements on fitness testing equipment, facility space and size, the proposal did not provide any detail indicating that it understood these requirements. *Id.*

While DOCS acknowledges the lack of specific information in its proposal, it argues that it did not have access to certain documents referenced in the SOW that would have contained information regarding the required fitness testing. Comments & Supp. Protest at 4. If it had access to these documents, DOCS argues, its proposal could have provided more specificity. *Id.*

To the extent that DOCS argues it should have had access to additional documents referenced in the SOW, this argument is an untimely challenge to the terms of the solicitation. 4 C.F.R. § 21.2(a)(1); *Navient Solutions, LLC*, B-418870, B-418870.5, Oct. 6, 2020, 2020 CPD ¶ 322 at 6. Moreover, it appears that the information missing from the DOCS proposal concerned information set forth in the SOW itself. MOL at 15-16. In sum, our review of the record confirms the agency's assessment that the

discussion of pre-employment fitness testing in DOCS's proposal is, in fact, general and high-level, and we have no basis to question the evaluation.

A final agency concern under this element was that the specialist area and number of physicians DOCS identified in its proposal raised questions about the firm's ability to complete CBP's volume of services. AR, Tab 15, DOCS Phase I Evaluation at 3. In its protest, DOCS raised arguments in this connection concerning its nationwide providers. Protest at 8-9.

In the agency report, a TET member explains that [DELETED]. AR, Tab 3, TET Member Statement at 4. This raised concerns for the agency about whether the provider and individual identified in the proposal would have the capacity to manage the additional requirements. *Id.* In its comments on the agency report, DOCS essentially repeats its initial allegations concerning its nationwide providers, which does not address the agency's concern. As a result, since DOCS does not respond to the agency's concern, we have no basis to find the evaluation unreasonable.

The second of the six elements under the technical and management approach overview subfactor required offerors to describe their ability to provide a nationwide network of testing facilities capable of performing medical evaluations, fitness tests, and specimen collection for drug testing services within a 60 mile radius of any candidate's home address and employee's duty station. RFP, amend. 5 at 67-68. Offerors were to provide maps that showed the nationwide locations of their providers and specified which services were available in each area. *Id.*

One agency concern under this element was that the map provided by DOCS did not indicate which services were offered at the provider locations. AR, Tab 15, DOCS Phase I Evaluation at 3. The agency wanted information regarding the type and quantity of services to be provided at the locations to ensure there was adequate coverage at each site. RFP, amend. 5 at 68.

DOCS's map indicates all of the locations of its providers with different color flags and symbols. AR, Tab 11, DOCS Volume I – Geo-Access Map at 1. The map explains that clinical locations are denoted by orange flags, and all pre-employment services are performed there. *Id.* The map also explains that locations that provide specialty care are denoted by red stars. *Id.* The map does not provide any further detail about the types of services offered at the different locations.

DOCS argues that the agency assigned conflicting ratings when it assessed DOCS's proposal a lower confidence rating owing to a lack of detail in the firm's map, but a higher confidence rating based on the protester's assurance that it could provide the necessary services at every location during oral presentations. Protest at 9. The agency responds that these seemingly conflicting ratings are not conflicting because they involve two separate evaluation considerations based on different aspects of the proposal. The map was evaluated as part of the overview subfactor evaluation and the oral presentation was evaluated as part of the oral presentation subfactor; these two

separate evaluations were considering different aspects of DOCS's technical and management approach. MOL at 19.

We have no basis to find that the agency unreasonably concluded that DOCS's map lacked detail regarding the types of services provided at the noted locations. While the map lays out DOCS's nationwide presence in detail, the map only explains that certain locations provide pre-employment services, and others provide specialty care. The map and its accompanying explanations make no mention of which services in particular are offered at the varying locations.

Subfactor B: Oral Presentation

Under the oral presentation subfactor, offerors were to discuss, in the context of five technical problems, a "highly detailed" methodology for the government to evaluate its level of confidence in the firm's technical and management approach to addressing the SOW's requirements. AR, Tab 16, DOCS Phase II Evaluation at 1. The agency identified nine concerns that lowered its confidence in DOCS's proposal. *Id.* at 2-3.

For example, the fourth of the five technical problems required offerors to describe one of the biggest challenges it would need to overcome, and how it envisions meeting that challenge. *Id.* The agency recorded that DOCS did not respond with any detailed methodology to address challenges it may face. *Id.* at 3.

DOCS points to a variety of strategies in its written proposal, and argues that portions of these strategies were discussed in oral presentations, and that these strategies were its proposed methodology for addressing challenges. Protest at 11. DOCS also points to its oral presentation slides and argues that the slides both described how it would face challenges and provided examples of how it addressed challenges via its Transition-In plan used in previous contracts. *Id.*

The agency responds that written portions of DOCS's proposal raised its confidence in how the firm would address challenges, while the oral presentation caused the agency to have lower confidence in the firm's ability to deal with challenges. AR, Tab 16, DOCS Phase II Evaluation at 3. The agency explains that DOCS focused on the entire transition-in phase as a challenge during the oral presentation, and did not articulate how it would deal with challenges within that phase. MOL at 24-25. While the agency's minutes of the oral presentation note that DOCS articulated several challenges, they also note that DOCS did not provide a methodology for addressing the challenges. AR, Tab 17, DOCS Oral Presentation Meeting Minutes at 2.

Based on our review, DOCS has given us no basis to find that the agency unreasonably concluded that the firm did not articulate during its oral presentation a methodology for facing challenges while performing the contract. DOCS points to nothing in the record that shows any clear methodology for facing challenges.

As another example, the fifth technical problem identified in the solicitation concerned management and staff planning and execution. Specifically, offerors were asked to describe their staffing approach, including how they will manage the allocation of staff and assets and how subcontractors will be used. AR, Tab 16, DOCS Phase II Evaluation at 1.

In this regard, the agency expressed a concern that DOCS did not provide information about its staffing approach and structure, in particular, this information was not provided about daily operations. *Id.* at 3. DOCS argues that its staffing approach and structure were detailed on its slides, and flatly claims that the agency's conclusions to the contrary are "false" and "nonsense." Protest at 12, Comments & Supp. Protest at 9-10.

In response, one of the TET members states that while DOCS addressed staffing in its presentation, it did not provide sufficient detail to give the agency confidence that the firm could perform the contract. AR, Tab 3, TET Statement at 8. The TET member explains that when DOCS was asked clarifying questions about its staffing approach and key personnel, the firm's responses lacked specificity and detail. *Id.* Nothing in the record indicates that DOCS detailed a clear staffing approach and structure that illustrated its day to day operations. While the firm's slides describe certain positions and groups of staff, the record does not reflect that the firm explained how the staff operated or interacted. As a result, we have no basis to question the evaluation.

A final concern the agency identified was that supporting medical review officers (MROs) appeared to be subcontractors, but it was unclear how the MROs would be involved with planning, managing, and executing processes. AR, Tab 16, DOCS Phase II Evaluation at 3.

DOCS argues that the role of the MRO was set forth in the SOW and there was "no need to regurgitate it," and that the agency could have asked its Lead MRO questions at the oral presentation. Comments & Supp. Protest at 11. This argument is not responsive to the agency's reasonable concern, which was how DOCS would manage the MRO process given the function appeared to be delegated to subcontractors. The protester has given us no basis to find the evaluation unreasonable.

Past Performance

Finally, DOCS argues that its proposal should have received a higher confidence rating under the past performance factor. Comments & Supp. Protest at 3-4. Under the past performance factor, offerors were to identify recent past performance that was similar in size, scope, and complexity to the requirements here. RFP, amend. 5 at 69. DOCS provided three past performance questionnaires (PPQs) for two contracts, one from a Texas Army National Guard contract, and two from the DHS-ICE contract referenced above. AR, Tab 13, DOCS Volume II, Past Performance, at 1. The agency identified several aspects of DOCS's proposal that lowered the expectation of success and rated it "some confidence." AR, Tab 15, DOCS Phase I Evaluation at 5.

Our Office reviews an agency's evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. *Richen Mgmt., LLC*, B-409697, July 11, 2014, 2014 CPD ¶ 211 at 4. An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion. *Cyber Protection Techs., LLC*, B-416297.2, B-416297.3, July 30, 2018, 2018 CPD ¶ 270 at 6. An offeror's disagreement with an agency's evaluation, without more, does not demonstrate that those judgments are unreasonable. *Cape Envtl. Mgmt., Inc.*, B-412046.4, B-412046.5, May 9, 2016, 2016 CPD ¶ 128 at 8.

The agency noted that both the PPQ for the Army National Guard and one of the PPQs for the DHS-ICE contract provided ratings of "some confidence" under the assessment of satisfaction with subcontractors used by DOCS. AR, Tab 15, DOCS Phase I Evaluation at 5. This caused the agency concern due to the firm's reliance on subcontractor support to meet the requirements here. *Id.*

DOCS argues that the evaluation conclusion was unreasonable because the solicitation does not state that lower confidence ratings would be given to firms using subcontractor support, and asserts that the PPQ ratings concerned subcontractors not proposed for use here. Comments and Supp. Protest at 11-12.

The record shows that the agency's concern was not that DOCS is using subcontractors, but that DOCS was rated only "some confidence" in its use of subcontractors in the above-referenced PPQs and the firm would be relying on subcontract support to meet the requirements here. As for DOCS's complaint that it is not using the same subcontractors here,³ DOCS had an opportunity to provide that information in the optional narrative portion of the PPQs and did not do so. Under the circumstances, we think the agency's concern was reasonable.

The agency also noted that one of the DHS-ICE PPQs similarly provided a rating of "some confidence" under the questionnaire's category for satisfaction of quality, accuracy, and completeness in reviewing medical exams and consultations. AR, Tab 15, DOCS Phase I Evaluation at 5. The agency found this of concern because the majority of this contract includes requirements to review medical exams and consultations. *Id.* DOCS complains that the PPQ at issue should have been ignored, because DOCS provided a more recent PPQ where it was rated with high confidence for the same category. Protest at 15. DOCS contends that ignoring this questionnaire would result in a higher rating under the past performance factor.

DOCS's objection to the agency's weighing of these PPQs does not establish that the agency acted unreasonably. Despite DOCS's argument that the PPQ on which it

³ We note for the record that DOCS's oral presentation slides state that the subcontractors being used are currently working with the firm for provision of similar services with the Army National Guard. Tab 14, DOCS Oral Presentation Slides at 28.

received the higher rating is more recent, there is no date on this PPQ to establish that it was completed more recently than the PPQ on which it received the lower rating. In any case, the agency is not required to ignore or discount the older PPQ merely because it is older, and DOCS provided no contextual information in the PPQ explaining the differences. *National Disability Rights Network, Inc.*, B-413528, Nov. 16, 2016, 2016 CPD ¶ 333 at 7.

The protest is denied.

Thomas H. Armstrong
General Counsel