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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Medical Information Services

File: B-287824

Date: July 10, 2001

Stephen Jacob for the protester.
Phillipa L. Anderson, Esq., Rheba Heggs, Esq., and Philip Kauffman, Esq., Department of Veterans Affairs, for the agency.
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DIGEST

1. Challenge to the evaluation of protester's proposal is denied where the record shows that the technical evaluation board (TEB) evaluated the proposal in accordance with the criteria announced in the solicitation and the record supports the TEB's conclusions.

2. A proposal found deficient following a comparative evaluation of proposals (rather than on a pass/fail basis) under traditional responsibility factors such as experience, past performance, and personnel qualifications is not a matter of responsibility subject to the Small Business Administration's certificate of competency procedures.

DECISION

Medical Information Services (MIS) protests the award of a contract to Information & Professional Management Group (IPMG) under request for proposals (RFP) No. 261-0077-01, issued by the Department of Veterans Affairs (VA) for medical transcription services for the VA's Sierra Nevada Health Care System (Reno). MIS contends that the VA improperly rejected its proposal and challenges the award to IPMG on several grounds.

We deny the protest.

The RFP, issued on January 17, 2001 as a total small business set-aside, contemplated the award of a fixed price, indefinite-delivery/indefinite-quantity contract for a base year with up to four 1-year options. Offerors were required to submit unit and extended prices for transcribing estimated quantities of seven different types of medical reports (e.g., discharge summaries, examinations, operation reports/procedures, and consultation progress). The RFP listed the following evaluation factors (maximum point values for each, shown in parentheses, were not provided in the RFP): technical capabilities (20), past performance (10), "experiences" (20), and price (50), for a maximum combined possible score of 100 points. Award was to be made to the offeror whose proposal was deemed most advantageous to the government.

Twelve firms, including MIS and IPMG, responded to the RFP by the time set on March 2 for receipt of proposals. Each member of a technical evaluation board (TEB) evaluated proposals by assigning numerical ratings under each of the technical evaluation factors, and an average total score. The contracting officer (CO) separately evaluated prices by assigning the maximum number of points available for price to the lowest priced proposal, and proportionately lower scores to higher prices. Following that initial evaluation, the CO provided all offerors with an opportunity to revise their prices. In response to an inquiry regarding this request, the CO explained to MIS that the VA had not excluded any proposal from consideration at that time, and that all offerors were being provided with an opportunity to revise their prices.

The table below shows the overall ranking of all offerors' proposals based on combined technical and price scores.

	Price/Score	Tech.	Total
IPMG	$645,990/46.23	49.00	95.23
A	774,777/38.55	48.67	87.22
B	635,812/46.97	37.00	83.97
C	688,350/43.39	39.67	83.06
D	645,495/46.27	36.33	82.60
E	942,808/31.68	47.00	78.68
F	732,314/40.78	36.67	77.45
G	678,400/44.02	33.33	77.35
H	864,470/34.55	36.00	70.55
MIS	597,308/50.00	10.67	60.67
I	805,936/37.06	12.00	49.06
J	1,135,068/26.31	13.33	39.64

Agency Report (AR) exh. 13.

In its report to the CO, the TEB pointed out that IPMG's technical proposal had earned the highest technical score. The evaluators noted that IPMG had been in business for more than 5 years providing similar services to several VA hospitals and to the Department of Defense. The TEB found that IPMG had demonstrated that it is

the best qualified firm to perform the required services and recommended award to IPMG. The CO determined that IPMG's price was reasonable, accepted the TEB's recommendation, and awarded the contract to that firm on April 9. Upon learning of the award, MIS requested a debriefing.

In her written debriefing, the CO informed MIS that the RFP specified "a contractor-owned digital dictation system located at the contractor's office, and did not include [MIS's proposed] technology . . . ." AR exh. 20, Debriefing Letter to MIS, Apr. 13, 2001. The CO further pointed out that the VA had not established a competitive range, and that all offerors had been given an opportunity to revise their prices. This protest followed an agency-level protest which the agency now concedes was improperly dismissed as untimely filed.

MIS challenges the evaluation and rejection of its proposal. The protester primarily asserts that MIS's proposed technology complies with the RFP's requirement for a contractor-owned digital dictation system. MIS also contends that the CO was required to refer the rejection of its proposal to the Small Business Administration (SBA) for review under SBA's certificate of competency (COC) procedures.

In reviewing a protest against the evaluation of proposals, we examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Support Servs., Inc., B-282407, B-282407.2, July 8, 1999, 99-2 CPD ¶ 30 at 3. As discussed below, we find that the evaluation of MIS's proposal was reasonable and consistent with the evaluation criteria.

As a preliminary matter, although MIS understood the CO's letter as suggesting that MIS's proposed solution did not comply with the RFP, neither the evaluation record nor the award decision document reveal any concerns by the TEB or the CO over MIS's proposed technical solution. Rather, the evaluation record shows that the TEB downgraded MIS's proposal for other reasons. For instance, under the past performance factor, offerors were to provide proof of past performance for three contracts similar in scope and size to the contract to be awarded under the RFP, performed within the past 3 years. As all the evaluators recognized, MIS, a new company, had submitted no past performance history. Nevertheless, the TEB assigned MIS's proposal 5 of 10 available points in this area; this was consistent with the instruction on the score sheets the TEB used that offerors without past performance history were to be given a "neutral rating" of 5 points. We view the TEB's rating of MIS's proposal under the past performance area as being tantamount to a neutral rating consistent with Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iv), which provides that offerors without a record of relevant past performance or for whom past performance information is not available may not be evaluated favorably or unfavorably. See Symtech Corp., B-285358, Aug. 21, 2000, 2000 CPD ¶ 143 at 10.

Similarly, MIS's lack of past performance history was the reason for its low score under the technical capabilities factor, which also focused on past performance, calling for offerors to demonstrate their experience and achievements related to their ability to perform transcription services.[1] In this area, two evaluators gave the proposal 0 points and the third evaluator gave it 5 points, out of a total of 20 available points. While the scores awarded do not reasonably represent a neutral rating as required under FAR § 15.305(a)(2)(iv), see Meridian Management Corp., B-285127, July 19, 2000, 2000 CPD ¶ 121 at 3 n.2, MIS was not prejudiced by the scores it received in this area. Assuming a score of 10 points (the halfway point on the 20-point scale) reasonably represents a neutral rating under this factor, MIS's overall technical score would increase to only 19 points, raising its total score, including price, from 60.67 to 69 points;[2] as the table above shows, this score would not change MIS's ranking as 10th out of 12 offerors. See NAHB Research Center, Inc., B-278876.2, May 4, 1998, 98-1 CPD ¶ 150 at 5.

Under the experiences factor, where MIS's proposal earned an average total score of only 3 points (out of a maximum possible score of 20 points), offerors were to provide information related to the firm's management's qualifications, and that of personnel proposed to perform the transcription services. In addition, the offeror's quality assurance (QA) plan, contingency plan, and maintenance schedules were also to be evaluated in this area. One evaluator downgraded MIS's proposal in this area because the firm had not adequately demonstrated its personnel's qualifications, had not provided a contingency plan, and did not provide its maintenance schedule. Another evaluator downgraded the protester's proposal under this factor because he found that most of the data MIS provided was based on estimates, and not on its actual performance. That evaluator also noted that, although MIS had a QA plan, the firm did not adequately explain how the transcription services would be monitored. Although MIS disagrees with the TEB's conclusions, mere disagreement with the

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[1] To the extent that MIS challenges the inclusion of several evaluation subfactors related to the firm's experience, achievements, and past performance, which were listed in the RFP, under both the technical capabilities and experience factors, this contention, raised for the first time in MIS's comments on the agency report, is untimely. Under our Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for the receipt of proposals must be filed prior to that time to be considered by our Office. 4 C.F.R. § 21.2(a)(1) (2001).

[2] The record shows that the TEB arrived at the consensus scores by averaging the scores of the three TEB members under each factor. Thus, under the technical capabilities factor, the average of the three scores (0, 0, and 5 points) was 1.67 points. Assuming instead that each evaluator had given MIS 10 points, its average score under this factor would be 10 points, an increase of 8.33 points, which would increase its overall technical score from 10.67 to 19 points.

agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. Hard Bodies, Inc., B-279543, June 23, 1998, 98-1 CPD ¶ 172 at 3. Based on our review of the record, we have no basis to object to the evaluation of MIS's proposal.

MIS argues that the evaluation of its proposal was flawed because the evaluators were not uniform in their ratings. However, technical evaluators have considerable latitude in assigning ratings which reflect their subjective judgments of a proposal's relative merits. I.S. Grupe, Inc., B-278839, Mar. 20, 1998, 98-1 CPD ¶ 86 at 5. While MIS accurately notes that the evaluators differed slightly on the ratings provided its proposal, disparate scoring among evaluators by itself does not suffice to establish an improper evaluation. Unisys Corp., B-232634, Jan. 25, 1989, 89-1 CPD ¶ 75 at 6. One evaluator's scoring is not unreasonable merely because it is based on judgments different from those of other evaluators. Arsenault Acquisition Corp.; East Mulberry, LLC, B-276959, B-276959.2, Aug. 12, 1997, 97-2 CPD ¶ 74 at 4.

MIS also argues that since it is a small business, the agency should have referred the rejection of its proposal to the SBA for consideration of a COC. An agency may use traditional responsibility factors, such as experience, past performance, and personnel qualifications, as technical evaluation factors, where, as here, a comparative evaluation of those areas is to be made. Dynamic Aviation--Helicopters, B-274122, Nov. 1, 1996, 96-2 CPD ¶ 166 at 3; ASR Management & Tech. Servs., B-244862.3, B-247422, Apr. 23, 1992, 92-1 CPD ¶ 383 at 7. Where a proposal is determined to be deficient pursuant to such an evaluation, the matter is one of relative technical merit, not unacceptability, which would require a referral to the SBA. Advanced Resources Int'l, Inc.--Recon., B-249679.2, Apr. 29, 1993, 93-1 CPD ¶ 348; Aerospace Design, Inc., B-247793, July 9, 1992, 92-2 CPD ¶ 11 at 3.

As discussed above, MIS's proposal was not rejected as technically unacceptable and there was no determination of nonresponsibility. The CO simply used the TEB's results in a comparative analysis of all the proposals to determine which proposal would be most advantageous to the government. Because the agency did not conduct a responsibility determination, but a comparative evaluation of the competing proposals, the agency was not required to refer the matter to the SBA. See A & W Maint. Servs., Inc., B-258293, B-258293.2, Jan. 6, 1995, 95-1 CPD ¶ 8 at 3; Advanced Resources Int'l, Inc.--Recon., supra.

Finally, MIS also challenges the award to IPMG on several grounds, including that IPMG is not a small business, and that the evaluators may have been biased in favor of IPMG because it is the incumbent contractor. Since nothing in MIS's protest would alter the ratings of the eight intervening offers--all of which earned significantly higher technical scores than MIS's proposal--MIS would not be in line for award even if its challenge to the award were sustained. Accordingly, MIS is not

an interested party to protest the selection of IPMG's proposal for award.[3] Four Seas and Seven Winds Travel, Inc., B-244916, Nov. 15, 1991, 91-2 CPD ¶ 463 at 4; ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7 at 1.

The protest is denied.

Anthony H. Gamboa
General Counsel

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[3] In any event, MIS's challenge to IPMG's small size status is an issue for review by the SBA, not our Office. See 4 C.F.R. § 21.5(b). Further, MIS offers no evidence, and we see none in the record, to support its conclusory assertion that the evaluators were biased in favor of IPMG.