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**Comptroller General
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Decision

Matter of: The Arora Group

File: B-293102

Date: February 2, 2004

Edward J. Tolchin, Esq., Fettmann, Tolchin & Majors, for the protester.
Mike Colvin, Department of Health & Human Services, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of the protester's proposal as having a significant weakness under the qualifications of key personnel evaluation criterion because certain resumes did not show that the individuals had required certifications was unreasonable, where the protester's written discussion responses stated that the individuals proposed had the certifications; the fact that the certifications were not listed in the resumes was an inconsequential matter of form.

DECISION

The Arora Group protests the award of a contract to CasePro, Inc. under request for proposals (RFP) No. 233-03-0306, issued by the Department of Health & Human Services, for the services of occupational health professionals and ancillary staff that the Federal Occupational Health Services (FOHS) requires in delivering occupational health (OH) and clinical services in the western area of the United States. Arora argues that the agency's evaluation of proposals, and selection of CasePro's higher-priced proposal for award, were unreasonable.

We sustain the protest.

The RFP, issued as a competitive set-aside under section 8(a) of the Small Business Act, provided for the award of a fixed-rate, labor hours, personal services contract to provide OH support services for the FOHS to the offeror submitting the proposal

representing the best value to the government, considering the evaluation factors of technical merit, past performance, and cost/price.¹ The RFP specified that the technical merit factor would be evaluated on a 100-point scale, and set forth the following technical evaluation criteria and their relative weights: experience and capabilities (20 points), transition plan (15 points), quality assurance (10 points), qualifications of key personnel (20 points), and oral presentation (35 points). The RFP informed offerors that technical merit and past performance would “receive paramount consideration in the selection of the Contractor for this acquisition,” and as such, when combined, were “significantly more important than cost/price.”² RFP at 102.

The agency received five proposals, including CasePro’s and Arora’s, for the western area services. CasePro’s and Arora’s proposals were included in the competitive range and oral presentations were conducted. The offerors’ oral presentations were evaluated and scored, and written questions were forwarded to the offerors with a request for final proposal revisions. Final proposal revisions were received and evaluated, and after determining that there was a problem with pricing of services for California, the agency issued an amendment and again requested final proposal revisions.

CasePro’s final proposal revision received 86 out of 100 points under the technical merit factor and a rating of “good” under the past performance factor, at an evaluated price of \$35,067,042.³ Arora’s final revised proposal received 81 points under the technical merit factor and a rating of “excellent” under the past performance factor, at an evaluated price of \$32,877,905. Agency Report (AR),

¹ The RFP (at 6) provided:

The FOHS provides occupational health (OH) consultation, and stimulates the development of improved OH and safety programs throughout the Federal Government. FOHS defines OH from the Federal Government perspective as: a comprehensive approach, with a public health perspective, to improving the health and safety of the Federal work force productivity, and decreasing the Government’s liability and health care costs through various clinical, environmental, educational, and risk-based prevention programs.

² The solicitation was silent as the relative importance of the technical merit and past performance factors; because of this, the factors are assumed to be approximately equal in importance. Beneco Enters., Inc., B-283154, Oct. 13, 1999, 2000 CPD ¶ 69 at 9.

³ Proposals were evaluated under the past performance factor as “excellent,” “good,” “marginal,” “poor,” or “neutral.”

Tab 49, Summary of Negotiations and Recommendation for Award, at 9-12. The principal weaknesses identified in Arora's technical proposal were (1) the resumes of two of Arora's five proposed area nurse managers did not "indicate the required certifications . . . for AED [automatic external defibrillator]/CPR [cardiopulmonary resuscitation]," as set forth in the RFP; (2) its proposed transition plan did not demonstrate an understanding of the relationship between the contracting officer and Arora; and (3) its quality assurance plan was found lacking in a number of areas. AR, Tab 35, Technical Evaluation Report, Western Area Evaluation, at 3.

The agency, noting that CasePro's higher score under the technical merit factor represented a "difference in actual technical merit" because "CasePro's technical proposal fully addressed all technical issues that were conveyed to them by the Government," determined that CasePro's proposal represented the best value to the government, notwithstanding Arora's higher past performance rating and lower evaluated price, and awarded the contract to CasePro. AR, Tab 49, Summary of Negotiations and Recommendation for Award, at 9-10.

Arora challenges the reasonableness of each of the three weaknesses found in its proposal. In reviewing protests against allegedly improper evaluations, 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 accord with the RFP's evaluation criteria and applicable procurement statutes and regulations. Landoll Corp., B-291381 et al., Dec. 23, 2002, 2003 CPD ¶ 40 at 8.

With regard to the first identified weakness, which was under the qualifications of key personnel evaluation criterion, the RFP identified the project director and area nurse managers as key personnel, and set forth qualification requirements for these positions. The RFP required that the area nurse managers have, among other things, AED and CPR certifications. Offerors were instructed that proposals were to include resumes for each of the key personnel positions, which, among other things, provided the proposed individual's education as well as certifications obtained.

The agency found in evaluating Arora's initial proposal that two of the five proposed area nurse managers lacked occupational nursing experience, and that the resumes for the individuals proposed did not provide that they had AED or CPR certifications. AR, Tab 16, Initial Technical Evaluation Report, at 1. During discussions, the agency informed Arora of these findings, and questioned whether Arora had "attempt[ed] to recruit the incumbent Area Nurse Managers." AR, Tab 31, Negotiation Issues for Arora, at 1.

Arora responded in its revised proposal by withdrawing the resumes of the individuals it had initially proposed for area nurse managers, and submitting the resumes of the five incumbent area nurse managers. Arora added that it had "confirmed that each of [its] proposed Area Nurse Managers possesses the required

[AED and CPR] certifications and this documentation will be made available to FOHS following award.” AR, Tab 13, Arora Technical Proposal Revision, at 1.

In evaluating Arora’s final revised proposal, the record reflects that the agency did not have any question as to whether the incumbent personnel proposed by Arora as area nurse managers had the requisite certifications, and was aware that CasePro had proposed these same incumbent personnel (with different resumes) for the same positions. Nevertheless, the agency evaluated Arora’s proposal as having a “significant weakness/deficiency” under the qualifications of key personnel evaluation criterion because the resumes submitted by Arora for the same area nurse managers did “not meet the AED/CPR certification requirements,” while at the same time noting as a “strength” of both CasePro’s and Arora’s proposals that “[a]ll proposed Area Nurse Managers are the incumbents, and meet at least the minimum education and experience required by [the] RFP.” AR, Tab 35, Final Technical Evaluation Report, Western Area Evaluation, at 1, 3; Tab 52, Arora’s Debriefing, at 1.

In defending the protest, the agency explains that because CasePro had “expended additional effort to comply with the RFP requirements for proposal submission” by obtaining “new, updated resumes” for the same area nurse managers as proposed by Arora (who had not obtained updated resumes), the agency “question[ed] the appropriateness” and “fair[ness]” of finding Arora’s final revised proposal without weakness or deficiency here, “based upon information obtained from a competitor’s proposal.” Contracting Officer’s Statement at 18-19.

The record shows that the agency did not solely rely on the fact that CasePro’s resumes showed the certifications in order to determine that the area nurse managers had the required certifications, because Arora’s discussion responses stated that these individuals had the certifications. The only remaining agency concern was that the information concerning these individuals’ certifications was not included in the actual resumes submitted by Arora, but rather was provided by Arora as a response to a discussion question. Under the circumstances, we think that the only flaw in Arora’s proposal under this criterion was an inconsequential matter of form that could not reasonably be considered a “significant weakness/deficiency” in Arora’s proposal, or provide a proper basis for differentiating between the technical merit of the proposals submitted. See Son’s Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424 at 7.

This evaluation error is material here. As indicated above, the technical difference between Arora’s proposal (81 points) and CasePro’s proposal (86 points) was based on the three weaknesses identified above. This technical difference formed the basis for award to CasePro, notwithstanding Arora’s higher past performance rating and lower evaluated price. Therefore, the record reflects that Arora would have had a reasonable chance of receiving award, but for the agency’s unreasonable evaluation of Arora’s proposal under the qualifications of key personnel evaluation criterion, and we sustain the protest on that basis.

We find no merit to the remainder of Arora's protest contentions. With the regard to Arora's challenge to its transition plan weakness, the RFP (at 93) required that offerors submit a transition plan that included:

[a]n organizational chart that displays internal and external organizational relationships. The organizational chart shall identify the individuals (at all levels) who will be responsible for the transition and their respective roles. The chart shall detail the lines of communication and how the Offeror will interface with FOHS during this phase of contract performance.

The RFP also specified that "[a]ll communications pertaining to contractual and/or administrative matters under the contract should be addressed to the Contracting Officer." RFP at 56. As found by the agency, and conceded by the protester, the organizational chart submitted with Arora's transition plan failed "to show that contractual and administrative matters are discussed directly with the contracting officer." See Protester's Comments at 3; AR, Tab 13, Arora's Clarifications and Proposal Revisions, at 3; Tab 35, Final Technical Evaluation Report, Western Area Evaluation, at 3.

The protester contends that the requirement set forth in the solicitation that "communications pertaining to contractual and/or administrative matters . . . should be addressed to the contracting officer," RFP at 56, is inapplicable to the transition phase of the contract because, in the protester's view, "[t]ransition communications are not of a 'contractual or administrative' nature; they are of a technical nature." Protester's Comments at 4. This contention is without merit. Simply put, we fail to see, and the protester has not explained, why communications between the contractor and the agency during the transition phase of the contract are not "contractual and/or administrative," and thus we see no basis to object to this aspect of the agency's evaluation.

We also find no merit to Arora's challenge to the numerous flaws found in Arora's quality assurance plan. Among the flaws found by the agency were that certain aspects of Arora's plan were "unrealistic and inefficient," and that Arora's plan was "largely redundant," and was "heavy on philosophy, light in actual detail as to 'how' [the plan] will be put into effect through the contract." The agency concluded that "[i]t appears that [Arora] submitted [a] company [quality assurance] plan, and did not present a [plan] specific to this RFP." AR, Tab 35, Final Technical Evaluation Report, at 4.

Although the agency, in its report, provided a detailed response to Arora's protest that the evaluation of Arora's proposal under the quality assurance evaluation criterion was unreasonable, the protester, despite having counsel who had access under a protective order issued by our Office to all of the evaluation documentation,

including the individual evaluator worksheets and the technical evaluation reports, does not challenge the vast majority of the evaluated flaws in its quality assurance plan as identified by the agency. Rather, the protester points to one comment in the contracting officer's statement regarding Arora's "failure . . . to retype its quality indicators in its [quality assurance] plan," and argues that this comment pertains to "a formatting issue, not a substantive criticism." Protester's Comments at 4. This limited challenge to a comment in the contracting officer's statement does not in our view call into question the reasonableness of the agency's evaluation of Arora's proposal under the quality assurance criterion.

Arora also protests that the agency acted improperly in considering the experience of CasePro's subcontractor (the incumbent contractor that is now a large business) in evaluating the awardee's proposal under the experience and capabilities criterion to the technical merit evaluation factor. The protester contends that the evaluation of CasePro's proposal as "good" under this criterion was unreasonable because CasePro itself does not possess experience performing a contract "comparable in size and scope" to the contract to be awarded here, asserting that only CasePro's subcontractor has such experience.

Contrary to the protester's position, our Office has found that, in the context of a competitive 8(a) set-aside, an agency may consider a large business subcontractor's experience under relevant evaluation factors. Premier Cleaning Sys., Inc., B-249179.2, Nov. 2, 1992, 92-2 CPD ¶ 298 at 4; cf. Innovative Tech. Sys., Inc., B-260074, May 24, 1995, 95-1 CPD ¶ 258 (agency may have legitimate reasons for limiting the extent to which it will consider a large business subcontractor's experience in evaluating a proposal submitted by an 8(a) firm in response to a 8(a) set-aside). Accordingly, we cannot find the agency's evaluation of CasePro's proposal under the experience and capabilities criterion objectionable.

The protest is sustained.

We recommend that the agency reevaluate Arora's proposal under the qualifications of key personnel evaluation criterion and make a new source selection. If the agency concludes that CasePro is no longer in line for award, it should terminate the contract awarded to CasePro and award a contract to Arora if otherwise appropriate. We further recommend that the agency reimburse Arora for the costs of filing and pursuing its protest, including reasonable attorney's fees. Arora's certified claim for costs, detailing the time spent and cost incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1) (2003).

Anthony H. Gamboa
General Counsel