



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Moore Medical Corporation

File: B-261758

Date: October 26, 1995

Joseph C. Tarantino for the protester.

Joseph K. Wiener, Esq., Piper & Marbury, for General Medical Corporation; Gene R. Carper for Seneca Medical, Inc., and J. Michael O'Connor for Colonial Healthcare Supply Co., interested parties.

Barbara J. Stuetzer, Esq., and Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

Christina Sklarew, Esq., John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of proposals for medical/surgical supplies under a primary distributor program was reasonable where protester's proposal and references did not demonstrate sufficient breadth, depth, or relevancy of experience to assure contracting officer that the firm could successfully perform the contract.

DECISION

Moore Medical Corporation protests the rejection of its proposal by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. M3-Q1-95, alleging improprieties in the agency's evaluation of proposals.

We deny the protest.

The RFP was issued to establish a primary distributor program for procuring medical/surgical supplies through the award of multiple distributor agreements for each of 25 geographic cluster groups. The RFP statement of work explained the agency's intention to convert to commercially based distribution systems by establishing a multiple award medical/surgical primary distributor schedule for brand-name specific and generic medical and surgical supplies. The RFP described a primary distributor as a business concern that functions as a purchaser's principal source for a broad product line of medical and surgical supplies. The VA and other government agencies' medical facilities would use the distributor agreements to select primary (and/or secondary) distributors to provide medical/surgical supplies. The RFP explained that successful offerors were to maintain inventory for an extensive medical/surgical product line and were to possess the experience, skills

and capability to provide distribution services for such products along a full continuum of distribution strategies, including conventional, just-in-time and stockless distribution strategies.¹ Contractors would enter into customer ordering contracts for delivery of products under particular distribution strategies with authorized VA facilities in the geographic cluster for which the contractor received an award.

The RFP stated that awards would be made on a cluster-by-cluster basis and that three awards would be made for each geographic cluster. The RFP also stated:

"It is VA's desire that all three awards include "stockless" distribution. However, in the event that an acceptable offer is not received from a small business firm with "stockless" capability, VA will give consideration to small business firms who do not have "stockless" capability. To assure product and distribution service availability through the full continuum of the three distribution strategies, at a minimum, two of the three awards shall include "stockless" distribution."

The RFP also stated that awards would be made to the responsible offerors whose offers conform to the solicitation and which represented the best overall expected value, price and technical factors considered. The RFP listed two technical evaluation factors--technical excellence and socioeconomic consideration--and stated that they were listed in descending order of importance and that together, they were more important than price. Technical excellence included the following four subfactors: product availability, distribution services, operational capability, and quality control. Under this factor, the RFP stated that "[t]he offeror's proposed range and breadth of products and distribution services (including value-added) together with its supporting operational expertise and quality assurance programs will be evaluated to determine the offeror's relative ability to deliver an extensive medical/surgical product line and to furnish a full continuum of distribution services in accordance with the Statement of Work."

In addition, the RFP advised that the agency would develop a level of confidence assessment rating ("LOCAR") for each offeror. This rating was to reflect the government's degree of confidence that the offeror would keep the promises it made in its proposal. The rating was to "be used to adjust the Government's evaluation of the offeror's proposal, and may be highly influential to the determination of which offeror represents the best overall expected value." The RFP stated that in developing the LOCAR for each offeror, the agency would

¹Among other differences, the three distribution strategies involve different speeds and frequencies of deliveries.

consider the factors of past performance and financial condition, and that past performance and experience, or lack thereof, would be the most important factor in developing the LOCAR. The RFP also stated that the government would:

"evaluate the offeror's reputation for conforming to specifications and to standards of good workmanship, for adherence to contract schedules (including the administrative aspects of performance), for reasonable and cooperative behavior and commitment to customer satisfaction, and for having a business-like concern for the interests of the customer. The Government will also evaluate the depth, breadth, relevancy, and currency of the offeror's work experience."

The agency received 79 proposals in response to the RFP, including proposals from Moore for each of the 25 geographic clusters. Two technical teams evaluated the initial proposals, while the contracting officer evaluated the business proposals. The VA conducted discussions in writing, requesting additional information from Moore regarding aspects of its technical and business proposals. Regarding Moore's business proposal, the agency asked Moore to provide discounts for prompt payment; to clarify whether the firm would accept emergency orders; to provide the firm's commercial goods return policy; and to provide additional information regarding past or current contracts. Regarding Moore's technical proposal, the agency requested that Moore identify the medical/surgical manufacturers that had been listed with Moore's pharmaceutical and laboratory manufacturers, and requested further detail concerning five areas not relevant here. Moore submitted a revised proposal, and the contracting officer requested additional information to clarify Moore's responses. The technical panels evaluated the revised proposals and best and final offers (BAFO) were requested. Moore submitted a BAFO that included no additional technical revisions and thus did not require further technical review.

Moore's technical proposal received the highest score, earning 53.33 points on a 60-point scale. When price proposal scores were calculated, Moore's proposal also received the highest price scores among the offers considered for award, receiving from 33 to 36.6 points on a 40-point scale for each cluster.² However, the contracting officer then concluded that Moore's prices were "out of line with the price proposal scores of other offerors within the competitive range," since they were significantly lower. The contracting officer asked Moore to verify its offered fees, and Moore did so.

² The VA has provided evaluation summaries for several of the clusters for which award has been made. While it is not entirely clear from the record how the agency arrived at its price scores, it is clear that Moore's prices were relatively low. Price scores for the other offerors generally were not higher than 20.

Overall scores were calculated for each offeror by adding together the point scores for the technical and price proposals. The contracting officer developed a LOCAR for each offer, and multiplied the overall proposal score by this factor to determine which offers represented the best expected value to the government. Moore's proposal was assigned a LOCAR rating of .50. In the report prepared in response to the protest, the contracting officer states that:

"[a]lthough the technical panel considered Moore's technical proposal very competitive, the information contained in their business proposal affected my level of confidence that the protester would keep the promises it had made in its proposal, and I assessed that the protester had a 50/50 chance of fulfilling those promises, and applied a LOCAR factor of .50 to the proposal scores. I determined that Moore Medical's proposal did not represent the best overall expected value and that Moore Medical should not be further considered for award."

Consequently, Moore was notified that it was no longer eligible for award.

Moore protests that its proposal was improperly evaluated and unreasonably excluded from the competition. The protester contends that the agency's stated basis for assessing such a low LOCAR for Moore's proposal was not reasonable, nor were they raised during discussions. Thus, Moore argues that the perceived deficiencies in the proposal either were based on misunderstandings on the evaluators' part or concerned issues that could have been addressed and remedied through meaningful discussions.

In considering protests against an agency's evaluation of proposals, we will not evaluate the proposals anew and make our own determinations as to their acceptability or relative merits. SeaSpace, 70 Comp. Gen. 268 (1991), 91-1 CPD ¶179. Rather, we will examine the record to determine whether the evaluation was fair and reasonable and consistent with the evaluation criteria. Id.

At issue here is the LOCAR score that the contracting officer assigned to Moore. The application of this rating reduced Moore's overall score by half and effectively excluded Moore from the competition. The RFP specifically provided that this rating would be used to adjust the government's evaluation of the offerors' proposals, and could be highly influential to the determination of which offer represented the best overall expected value. In other words, offerors were advised that the LOCAR could directly affect the source selection decision. Further, the RFP stated that past performance and experience, or the lack thereof, would be the most important factor in developing the LOCAR.

After reviewing Moore's business proposal, the contracting officer concluded that Moore's experience primarily involved the distribution of pharmaceutical products, rather than medical/surgical supplies. In addition, she concluded that Moore lacked experience as a prime vendor. Each "evaluation summary" form that the contracting officer completed for Moore's proposal for the various clusters has the following comment:

"A LOCAR of .50 was assessed since information provided by Moore Medical is representative of pharm. products and not med/surg products. Current & past experience was supported by its references to be with pharmaceutical products--thus, offeror lacks experience relevant to the dist. of med/surg products. Moore also confirmed in its proposal its lack of experience as a med/surg prime vendor, a fact confirmed by its references and demonstrated by its very low dist. fees."

A "Past Performance LOCAR worksheet" for Moore states:

"Offeror's financial condition is good. However, relevancy & breadth of experience in the medical/surgical area could not be assessed. Thus, there is a 50% chance of probability this offeror can perform as a med/surg primary distributor."

The record shows that the contracting officer's primary concern was Moore's experience, both because she believed it was limited to pharmaceutical products and because the firm's experience appeared to be as a distributor rather than a prime vendor (which concern the contracting officer believed to be further reflected in Moore's low distribution fees). Although Moore listed experience which included the distribution of both medical and pharmaceutical supplies, the references that Moore included for past and current contracts reported that most or all of the supplies they purchased from Moore were pharmaceutical.

Moore argues that its technical proposal adequately demonstrates its medical/surgical product availability and distribution capability and shows that the firm carries more than 8,000 medical/surgical line items representing more than 500 vendors. The protester listed 20 categories of products in its product base, and attached lists of its products and vendors. In its business proposal, Moore described its approach as utilizing approximately 325 different vendors to supply more than 8,000 medical/surgical products through its four regional distribution centers. However, the agency points out that Moore's technical proposal in fact received a very high score. What lowered Moore's score was the LOCAR rating, which was based on Moore's description of its recent and current contracts and on the actual past experience profile that was developed by contacting the references Moore had furnished.

While Moore asserts that it is a distribution company, with significant experience in distributing a vast product line to many varied customers, and does not distinguish between product groups in demonstrating its capability to deliver products to its customers, we think the agency nonetheless could reasonably distinguish between product lines and modes of distribution in assessing the probability of successful performance. The contracting officer offers the following explanation of her conclusion that experience distributing pharmaceutical products was not relevant here:

"Pharmaceuticals and medical/surgical products are two totally different industries. Whereas pharmaceutical products have uniform packaging, are small in size (thus taking little space), and don't weigh much, medical/surgical products in contrast are packaged in all kinds of sizes, are bulky (taking warehouse space), and heavy (i.e. diapers, surgical instruments)."

Regarding the agency's assertion that the protester lacks experience as a prime vendor, Moore itself concedes that it lacks any specific experience as a prime vendor under a government contract, asserting only that the firm "successfully marketed a 'one-stop shopping' concept to over 1,500 federal government customers, including the Bureau of Prisons and the Coast Guard," before any federal government prime vendor program was developed. Moore insists that because its deliveries under this "de facto prime vendor" strategy were consistent with the needs of the ordering facilities at that time, it has demonstrated its ability to meet the agency's requirements here. However, even that assertion is tempered by Moore's explanation that its experience differed from the requirements at issue here because it did not involve the variety of distribution strategies currently required.

The contracting officer, moreover, argues that Moore's past experience is not directly applicable, stating that:

"The [Federal Supply Schedule] program is entirely different from the Medical/Surgical Primary Distributor Program. For example, under the FSS program, deliveries are on a conventional basis, and contractors are not required to provide distributor services along a full continuum of distribution strategies as required by the Statement of Work of the solicitation. DLA [D]efense Logistics Agency [Decentralized Blanket Purchasing Agreement DBPA] contracts are essentially pricing agreements, i.e., agreement is reached with suppliers to have the awarded medical/surgical distributors distribute suppliers' products at the agreed upon negotiated product prices with the suppliers. Distribution of products and related services are provided by the distributor, not the DBPA supplier."

The contracting officer states that she contacted all five of the references that Moore provided in its proposal, to assess the firm's past performance. From these contacts, she concluded that the majority of products being distributed under those contracts were pharmaceutical, and were delivered on a conventional basis; these conclusions, taken together with her conclusion that Moore's prices reflected a lack of relevant experience, resulted in her LOCAR assessment. We think the contracting officer's LOCAR assessment was consistent with the terms of the RFP. Within the discretion that is afforded contracting officers in assessing risk and applying evaluation criteria, we think she could reasonably conclude that the experience demonstrated in Moore's proposal failed to show the depth, breadth, relevancy, and currency of work experience that would merit a higher LOCAR.

Finally, we are not persuaded that the discussions with Moore were inadequate. First, since the assessment of the effect of Moore's inadequate experience was part of the award decision, rather than the evaluation process, this was not a weakness or deficiency that agencies ordinarily would be required to raise during discussions. Moreover, the agency asserts that "Moore Medical's lack of experience was perceived by VA to be an inherent weakness in actual experience which [Moore] could not change and which could not be corrected through discussions." The prior experience of an offeror is an aspect of its proposal that is generally not subject to improvement (although sometimes experience may be appropriately supplemented through additional personnel, subcontracting, or additional detail about experience described in a proposal). Consequently, agencies are not always obligated to discuss weaknesses identified in prior experience. AWD Technologies, Inc., B-250081.2, B-250081.3, Feb. 1, 1993, 93-1 CPD ¶ 83. Here, given the RFP's statement that an offeror's record of past performance and experience would be the most important factor in the development of the LOCAR, and the statement that the LOCAR would be used to adjust the government's evaluation of proposals, we believe the agency reasonably assumed that the protester had presented its most relevant prior experience, and that the failure to provide evidence of work experience of appropriate depth, breadth, relevancy, and currency demonstrated that the firm lacked such experience (the contracting officer's own investigation seems to have reasonably confirmed the lack of certain relevant experience.). We think the protester was adequately placed on notice by the terms of the RFP itself that relevant information regarding its past performance should be included in its proposal, so that the agency was not required to request additional information during discussions.

The protest is denied.

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