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**Comptroller General
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Decision

Matter of: Williamson County Ambulance Service, Inc.

File: B-293811.5; B-293811.6; B-293811.7

Date: December 15, 2004

Lawrence J. Sklute, Esq., Sklute & Associates, for the protester.
Dennis Foley, Esq., and Phillipa L. Anderson, Esq., Department of Veterans Affairs,
for the agency.
Sharon L. Larkin, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging technical and past performance evaluation of proposals for ambulance services is denied where agency reasonably evaluated proposals consistent with evaluation criteria and record otherwise supports the agency's source selection decision.
2. Protest asserting a conflict of interest because evaluator's daughter now works for awardee is denied, where daughter did not seek employment until after evaluation had been completed, and the source selection official had no knowledge of this employment until after award.

DECISION

Williamson County Ambulance Service, Inc. protests the award of three contracts to Mercy Regional Emergency Health Services under request for proposals (RFP) No. V15-04-0026, issued by the Department of Veterans Affairs (VA), for ambulance services at various locations in Illinois, Kentucky, and Indiana. Williamson challenges the agency's evaluation of proposals and source selection decision.

We deny the protest.

BACKGROUND

The RFP sought proposals to provide ambulance services for VA hospitals in five locations: Marion, Illinois; Effingham, Illinois; Mt. Vernon, Illinois; Paducah, Kentucky; and Evansville, Indiana. Firms were invited to submit proposals for any or all of these areas. The RFP provided for the award of a fixed-unit-price contract

for each geographic area, for a base year with 4 option years. Awards were to be made on a “best value” basis, considering technical, past performance, and price.

The RFP stated that the technical and past performance factors, when combined, were approximately equal to price. The technical subfactors, listed in descending order of importance, were personnel qualifications, operational organization, and vehicle fleet management. The past performance subfactors, which were equally weighted, were quality of past work performance, timeliness of past performance, and customer satisfaction. RFP amend. 1, ¶ 10.

The statement of work set forth a number of service requirements. For example, calls for routine or non-emergency same-day service required that service be provided within 45 minutes of the call, and for next-day or “future time” calls, service was to be provided within 30 minutes of the planned time. RFP amend. 1, ¶¶ 5-6. The contractor was also required to provide a minimum number of ambulances for each service area for which it submitted a proposal—that is, three vehicles were required for Marion, one each for Effingham, Mt. Vernon, and Paducah, and two for Evansville. RFP at 45.

In their technical proposals, offerors were required to provide:

[a] copy of the Job Description; a current, completed Competence Assessment Checklist; a current performance evaluation[;] and listing of relevant continuing education for the last two years for each Contractor employee who is proposed to provide services under a contract resulting from this solicitation.

RFP at 71. In addition, offerors were to provide:

copies of licenses/certificates and list recent related experience, training, specialized experience and personnel qualifications of Dispatcher(s) and [Emergency Medical Technicians (EMTs)], Paramedics/Nurses proposed to perform work on this contract. Information will include documentation fully describing the make of vehicle, model, and year of vehicles to be used, location of the facilities from which they will be dispatched and maintained, and information as to the metering devices or methods contractor proposes to use in determining mileage.

RFP at 72.

Mercy submitted an offer to provide ambulance services for all five geographical areas identified in the RFP. Williamson submitted an offer only for Marion, Mt. Vernon, and Paducah. Award was made to Mercy for all five service areas, and Williamson protested to our Office (B-293811.1, B-293811.2, B.293811.3). The agency took corrective action and reopened discussions with both offerors. We dismissed

the protests as academic. See Williamson Co. Ambulance Serv., Inc., B-293811 et al., May 3, 2004.

During the subsequent discussions, Williamson was advised that its proposal “did not contain employee performance evaluations” and “failed to demonstrate employees’ continuing education and training.” Williamson was also informed that two past performance references “noted concerns with understaffing, equipment problems, poor response times, poor communications and poor overall appearance,” while a third reported “problems with late pickups, vehicle operations, driver operations and failure to follow clear direction.” Agency Report (AR), Tab 30, VA Discussions Letter to Williamson, at 1-2.

Final proposal revisions (FPR) were received from both offerors. Williamson’s FPR included, among other things, a 3-page memorandum responding to the agency’s past performance concerns. This memorandum also responded to detailed past performance criticisms that had been released to the protester in redacted form during the development of the previous protests. FPRs were evaluated by the agency’s technical evaluation team on June 10, 2004. The contracting officer reviewed the technical team’s evaluation results and evaluated past performance.

The contracting officer (who was also the source selection authority) found Mercy’s FPR to be superior to Williamson’s. Among other advantages, the contracting officer noted that some of Mercy’s EMTs possessed “specialized experience” with administering heparin and nitroglycerin intravenous medication, and that Mercy provided continuing education that was “in addition” to what was required by the states. The contracting officer also noted that Mercy had “documented evidence of acceptable past performance,” would be adding five new ambulances to its existing fleet, and would be opening another facility in Herrin, Illinois, to provide quicker service to the Veterans Administration Medical Center (VAMC) in Marion. AR, Tab 19, Price Negotiation Memorandum, at 5-7.

With regard to Williamson’s FPR, the contracting officer noted that the firm provided the required vehicle information and a satisfactory operation plan. However, she found Williamson’s personnel qualifications to be “deficient” because “no performance evaluations were provided” and continuing education certificates were missing for some employees. In addition, the contracting officer noted that “[c]ustomer [s]ervice and past performance continue to be an area of concern.” Id. at 4-5. The contracting officer recognized that Williamson had submitted letters of recommendation and had “acceptable past performance” with other facilities, but found that this did not overcome documented unacceptable performance by Williamson for VAMC Marion under a contract that expired in 2002.¹ Williamson’s

¹ After Williamson’s contract expired in October of 2002, VAMC Marion has been procuring ambulance services on an “open market” basis—that is, purchasing

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poor performance under the Marion contract, the contracting officer found, “relate[d] directly to patient care” and included such issues as “untimely response, substandard vehicle conditions, staff not professionally dressed[,] and patient transport.” Id. at 5, 7.

On September 3, the contracting officer awarded contracts to Mercy for four of the five service areas. The agency determined that the two offerors (Mercy and Williamson) that submitted offers for Paducah could not meet the response time requirement for this area, and thus the agency decided to withhold award, amend the solicitation to extend the response time, and seek final proposals from the offerors that had previously submitted proposals for this area. Although Mercy also could not meet the response time requirement for Evansville (which was an area for which Williamson did not compete), the agency did not amend the solicitation and reopen competition, but made award to the firm based on a relaxed response time of 120 minutes because no other contractor had submitted a proposal for this area. With regard to the Marion area for which Mercy and Williamson competed, the agency found Williamson’s FPR to be less expensive than Mercy’s. However, the contracting officer determined that the extra cost associated with Mercy’s technically superior proposal was warranted because “direct patient care is concerned.” With regard to Mt. Vernon, Mercy’s FPR was selected because it was both technically superior and lower priced than Williamson’s.² Id. at 7-8.

PROTEST

After receiving notice of award, Williamson protested the award of the Marion and Mt. Vernon contracts, alleging numerous evaluation challenges to both offerors’ proposals under the technical and past performance criteria. After receipt of the agency report, Williamson raised new protest grounds, including that one of the evaluators had an impermissible personal conflict of interest and that the agency

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services on a trip-by-trip basis from available vendors. Both Mercy and Williamson have been providing ambulance services during the “open market” period. The contracting officer asserts that she was unaware of any adverse performance for Mercy during this “open market” time period, Hearing Transcript (Tr.) at 411, but received numerous reports of Williamson’s poor performance during this time period, which she considered during the evaluation. AR, Tab 31, Past Performance Documents.

² Mercy’s proposed price (for the base and option years) for Marion and Mt. Vernon was \$5,947,038.19 and \$77,071.25, respectively. Williamson’s price for these areas was \$5,734,968.00 and \$90,060.00. AR, Tab 19, Price Negotiation Memorandum, at 2.

improperly relaxed the response time requirement for Evansville without amending the solicitation.³

Where an evaluation is challenged, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 5. In this regard, it is an offeror's obligation to submit an adequately written proposal for the agency to evaluate. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19.

Based on our review of the record, which included multiple submissions from the parties and a hearing conducted by our Office, we find each of the numerous protest grounds raised by Williamson to be without merit. We discuss a few of the more significant issues below.

TECHNICAL EVALUATION

Williamson challenges the evaluation of its proposal under the technical factor. For example, under the personnel qualifications subfactor, Williamson asserts that the proposal was unreasonably downgraded because it lacked performance evaluations. Williamson contends that the firm submitted "Comprehensive Knowledge and Skills Testing" checklists with cumulative scores for its employees, which should have been viewed as performance evaluations. However, these testing checklists show only that the employees completed and have been tested for certain skill sets. The RFP required both a "Competence Assessment Checklist," such as this, and "a current performance evaluation" for each employee. RFP at 71. Given that Williamson provided only the checklists, and not performance evaluations, we find the agency's assessment to be reasonable.

Williamson also complains that the agency unreasonably assessed a deficiency for not providing continuing education documents for all of its proposed employees. In this regard, it contends it provided continuing education documentation for all of its employees except for two new employees, because those individuals were newly licensed and had not yet been required to complete any continuing education training. However, Williamson's proposal does not make this clear and, given its

³ Williamson also abandoned a number of its protest arguments (e.g., that the agency failed to hold discussions with the firm concerning adverse past performance, and that Mercy's proposal was ineligible for award because one of its facilities was, at least temporarily, shut down) when Williamson failed to respond in its comments after the agency addressed these issues in its agency report. See Planning Sys., Inc., B-292312, July 29, 2003, 2004 CPD ¶ 83 at 6.

obligation to submit an adequately written proposal, we find no error in the agency's assessment of a deficiency here.⁴

Williamson also challenges the evaluation of Mercy's proposal under the technical criteria. For example, it asserts that experience in administering heparin and nitroglycerin is not specialized and thus Mercy's proposal should not have been considered more favorably than Williamson's in this regard. However, the record demonstrates that administration of heparin and nitroglycerin intravenous medicine by EMTs requires special state-approved training, and that Mercy's proposal evidences that some of its EMTs have completed this training, while Williamson's proposal does not. Based on our review of the record, we find consideration of this specialized experience to be a reasonable discriminator between the proposals.

Williamson also contends that Mercy's proposal lacked the requisite vehicle licenses, that its ambulances were in poor condition, and that Mercy "misrepresented" to the agency that it had acquired five new ambulances. However, the agency found, and the record confirms, that Mercy provided all of the required vehicle information, including licenses and maintenance information. The record also shows that Mercy was in the process of leasing five new ambulances at the time the competition was being conducted, and, although some of these leases may have fallen through after contract award, we find no evidence in the record of misrepresentation. In any event, the agency reasonably concluded that Mercy already had a sufficient number of ambulances to perform the awarded contracts, even without the five additional ambulances. Accordingly, we find no error in the evaluation of Mercy's proposal.

Williamson also complains that offerors were treated disparately. For example, with regard to the Marion effort, Williamson argues that Mercy was credited for its plan to open a facility in Herrin, Illinois, which the agency found would allow Mercy to provide faster service than from its Benton, Illinois facility, but that Williamson was not credited for providing "the fastest" service from its facility located in Marion. Even if we were to find that the agency erred in its evaluation of facility location, Williamson has not shown that it was prejudiced as a result. Our Office will not sustain a protest unless the protester demonstrates that but for the agency's action, it would have had a substantial chance of receiving award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 103 F.3d 1557, 1581 (Fed. Cir. 1996). As the agency explains, and the record confirms, the

⁴ Williamson also complains that the agency downgraded its proposal for omitted EMT licenses, but the contemporaneous record does not show that Williamson's proposal was assessed a weakness for this issue. See AR, Tab 19, Price Negotiation Memorandum, 4-5, 7; Tabs 21-22, Technical Evaluation Summaries.

discriminating factor for award was Williamson's poor past performance, not the location of the offerors' facilities.⁵ Tr. at 316, 327, 332.

PAST PERFORMANCE EVALUATION

Williamson protests that the agency unreasonably evaluated its past performance. For example, it complains that the agency failed to contact the administrative contracting officer (ACO) listed by the firm as a reference for its prior Marion contract, and that the agency improperly considered the firm's past performance during the "open market" period that followed the expiration of this contract in 2002. It also complains that the agency failed to consider Williamson's explanations concerning past performance incidents that had been raised during the development of the previous protests and during discussions here.

Based on our review of the record, we find reasonable the agency's evaluation of Williamson's past performance. The record shows numerous incidents of poor performance for the VAMC Marion that occurred before and after the expiration of Williamson's contract in 2002. For example, the record notes incidents of late "pick-ups," vehicles without working radios, vehicles smelling of exhaust fumes, and life support equipment batteries being "dead." It also reveals incidents where Williamson refused to transport patients, or failed to follow instructions, and contains complaints of irresponsible driving and unprofessional dress. Contracting Officer's Statement (Oct. 7, 2004) at 1-2; AR, Tab 31, Past Performance Documents.

Williamson had an opportunity to address these concerns, which were generally revealed to the company during discussions and specifically revealed during the development of the previous protests, but the firm's responses, which the agency fully considered, did not alleviate the agency's concerns. Williamson reiterates those responses here, but although it disagrees with the agency's assessment, Williamson has not shown the agency's judgment to be unreasonable. See UNICCO Govt. Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

⁵ Williamson also contends that Mercy's proposal is technically unacceptable because the firm was not properly registered in the Central Contractor Registration (CCR) database. The record shows, however, that Mercy is registered in the CCR database under its corporate name and address. See AR, Tab 16, Mercy CCR Registration, which stated the awardee's status as "active in CCR; Registration valid until 03/04/2005." Although Williamson has identified a Data Universal Numbering System (DUNS) number for another of Mercy's office addresses (not its corporate address) that is not in the CCR database, Mercy's proposal was submitted in the firm's corporate name with its corporate address, which is the same name and address registered in the CCR database. See AR, Tab 28, Mercy Technical Proposal. We find that Mercy was properly registered in the CCR database prior to award as provided for by Federal Acquisition Regulation (FAR) § 4.1102(a).

We also find no error in the agency's failure to contact the ACO of Williamson's prior Marion contract. An agency is not required to contact each and every reference listed by an offeror in its proposal. Roca Mgmt. Educ. & Training, Inc., B-293067, Jan. 15, 2004, 2004 CPD ¶ 28 at 3. The agency explains here that during the time of the evaluation, the ACO was on medical leave and could not be reached. The agency instead contacted the contracting officer's technical representative, who had worked with Williamson for 3 years, and he reported that Williamson's performance was "poor at best" under Williamson's Marion contract. Although Williamson asserts that the ACO would have given a more favorable report, the record does not support this. In fact, the record contains a letter to Williamson from the ACO, and several letters to Williamson from a different contracting officer, complaining of performance issues during the contract period. E.g., AR, Tab 33, Past Performance Documents, exhs. 1, 3, 5, 8; see also exh. 7 (internal agency e-mails reflecting ACO's involvement in addressing performance issues with Williamson).

We also reject Williamson's argument that the agency should not have considered the firm's performance during the post-contract, or "open market," period. This work was for the same services, at the same locations, as is required under the RFP. To the extent that Williamson complains that the "open market" service is smaller in magnitude and scope, its argument is inconsistent with the statement of its president that, during the "open market" period, the company responded to a similar volume of calls as is required under the RFP. Declaration of Williamson's President (Nov. 14, 2004) ¶ 4.

Williamson also complains that the agency ignored instances of Mercy's poor past performance for several hospitals in and around the contract areas. Williamson raised these issues during the previous protests, and these concerns were raised with Mercy during discussions. According to the agency, Mercy successfully refuted Williamson's contentions or adequately responded to the issues, and also provided letters of recommendations, which demonstrated to the agency that Mercy's performance was satisfactory. In addition, Williamson contends that the agency ignored instances of Mercy's untimely performance during the "open market" period (and thus treated offerors disparately). The contracting officer, however, was not aware of any performance issues with Mercy during this time, and the only reports that she received (which were oral) indicated that Mercy's performance was "good." Tr. at 411; see also Tr. 377-78. Furthermore, the agency explains that, because the companies are not bound by contract during the "open market" period, the hospital does not routinely track their response times, and neither offeror was penalized for untimely performance during this period. Tr. at 344-48, 388.

In sum, we find that agency's evaluation of both offerors' past performance to be reasonable and supported by the record.

CONFLICT OF INTEREST

Williamson alleges that the evaluation was tainted because the daughter of one of the technical evaluators now works for Mercy as an EMT. However, the record shows that the daughter did not seek employment with Mercy until June 15, 2004, which was 5 days after the technical team had completed its evaluation and submitted its results to the contracting officer. The evaluator testified that he provided no further input into the source selection after he completed his evaluation on June 10, and furthermore, he did not even know that his daughter had applied for employment until after she began working for Mercy in August 2004. Tr. at 122, 124, 132. Although award was not made to Mercy until September 3, the contracting officer asserts that she had no knowledge that the evaluator's daughter worked for Mercy until after award was made. Tr. at 246. On these facts, we find no evidence that the award was tainted by a conflict of interest.

EVANSVILLE CONTRACT

Finally, Williamson argues that the agency relaxed the response time requirement for the Evansville contract without amending the RFP to allow other potential offerors to respond. Citing FAR § 15.206(e),⁶ the protester contends that relaxing the time requirement from 30/45 minutes as stated in the RFP, to 120 minutes as stated in Mercy's proposal, is so substantial that the agency was required to amend the RFP and reopen competition with the new requirement. Williamson asserts that it would have submitted a proposal had it known the response time requirement was going to be relaxed. Declaration of Williamson's President (Oct. 27, 2004) ¶ 3.

We dismiss this protest ground as untimely. During the development of the previous protests, Williamson's counsel was advised that Mercy's proposal for the Evansville and Paducah areas took exception to the response time requirements. Williamson protested the Paducah contract, but not the Evansville one, on this basis.⁷ In filing

⁶ FAR § 15.206(e) states:

If, in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

⁷ Williamson expressed no interest in performing the Evansville contract during the previous protests.

its initial protest here, Williamson still did not challenge award of the Evansville contract, even though it had no reason to expect that Mercy, the sole offeror for that area, had changed its proposal to respond within the time requirement. It was not until filing its comments in response to the agency report that Williamson first raised the allegation of relaxed requirements.

In order for our Office to meaningfully consider protest allegations, our Bid Protest Regulations require that protest issues such as these be presented within 10 days after the basis for protest is known, or should have been known. 4 C.F.R. § 21.2(a)(2) (2004). Our protest process does not contemplate consideration of a protester's piecemeal presentation of arguments that should have and could have been pursued much earlier in the protest process. See Comprehensive Health Servs., Inc., B-292858.3 et al., Apr. 27, 2004, 2004 CPD ¶ 165 at 8 n.4. Because Williamson had sufficient information to question the award of the contract for Evansville in its initial protest filing here, its failure to raise the grounds until its comments renders its protest ground untimely.

The protest is denied.

Anthony H. Gamboa
General Counsel