



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Comprehensive Health Services, Inc.

File: B-310553

Date: December 27, 2007

L. James D'Agostino, Esq., and Richard L. Moorhouse, Esq., Greenberg Traurig, LLP, for the protester.

Agnes P. Dover, Esq., Todd R. Overman, Esq., and Andrew C. Ertley, Esq., Hogan & Hartson LLP, for Logistic Health, Inc., an intervenor.

MAJ Carla T. Peters, Department of the Army, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Evaluation of protester's technical proposal was unobjectionable where, after discussions, agency reasonably determined that protester failed to correct identified weaknesses in technical approach; in particular, downgrading based on loss of proposed subcontractor after proposal submission was reasonable where loss of subcontractor reasonably was found to significantly impact protester's ability to provide certain health care specialists.
2. Agency reasonably determined that awardee's loss of proposed subcontractor after proposal submission did not warrant downgrading proposal—despite assessing weakness and revising strength associated with subcontractor in initial evaluation—where agency reasonably concluded that loss of subcontractor was not significant in light of awardee's substantial other proposed resources.
3. Agency provided meaningful discussions where, in response to failure of protester's initial proposal to address all statement of work requirements, it asked protester to describe and more fully explain identified processes, thereby leading protester into areas of its proposal that required amplification.
4. Agency's evaluation of awardee's price as reasonable was unobjectionable where evaluation was based on comparison of prices received and comparison of individual line item prices to independent government cost estimates (IGCE) for low and high ranges of estimated costs, and awardee's price—though higher than average IGCE—was lower than high range IGCE.

DECISION

Comprehensive Health Services, Inc. (CHS) protests the award of a contract to Logistic Health, Inc. (LHI) under request for proposals (RFP) No. WX81XWH-07-R-0021, issued by the Department of the Army for health readiness support services to be furnished to all Department of Defense service components. CHS challenges the technical and price evaluations, the adequacy of discussions, and the price/technical tradeoff determination.

We deny the protest.

The RFP sought proposals to support the Reserve Health Readiness Program (RHRP), under which reserve military personnel are provided medical and dental support services. The RHRP follows a predecessor program known as the Federal Strategic Health Alliance (FEDS_HEAL). RHRP services include immunizations; physical examinations; periodic health assessments (PHA); post deployment health re-assessments (PDHRA); dental examinations, x-rays, and treatment; laboratory services; occupational health services; and other services as required. The RFP contemplated the award of an indefinite-delivery/indefinite-quantity (ID/IQ) contract for a 1-year base period, with 4 option years.

Proposals were to be evaluated for “best value” on the basis of five factors (the first three of which included subfactors)--(1) technical approach--PHA; (2) technical approach--PDHRA; (3) corporate and management capabilities; (4) past performance; and (5) price. Factors 1 and 2 were of equal weight and were considered more important than factors 3 and 4, which were of equal weight. The non-price factors were rated on an adjectival basis (exceptional, good, acceptable, marginal, unacceptable, or, for past performance only, neutral) and, combined, were significantly more important than price. Price was to be evaluated for completeness, reasonableness, and to ensure offerors understood the RFP’s scope of work.

Three offerors, including CHS and LHI, submitted proposals, which were evaluated by a source selection evaluation board (SSEB). After the initial evaluation, only CHS’s and LHI’s proposals were included in the competitive range, and discussions were conducted with both. Both CHS and LHI had a proposed subcontractor withdraw from their proposals after initial proposals were submitted. Each addressed this change in its final proposal revision (FPR), and the SSEB considered the changes in its final consensus evaluation, the ratings under which were as follows:

	CHS	LHI
Factor 1: Technical App. PHA	Good	Good
General requirements	Good	Good
Individual medical readiness	Good	Exceptional
Additional services	Acceptable	Good
Factor 2: Technical App. PDHRA	Acceptable	Exceptional
Understanding requirements	Acceptable	Exceptional
General requirements	Acceptable	Exceptional
Factor 3: Corporate/Management	Acceptable	Exceptional
Program management	Acceptable	Exceptional
Quality control plan	Good	Exceptional
Transition plan	Acceptable	Good
Past Performance	Acceptable	Good
Overall Rating	Acceptable	Good
Price	\$706,953,207	\$784,474,334

Based on the SSEB's evaluation report, the source selection advisory council (SSAC) recommended award to LHI as the best value based on its technically superior proposal. After reviewing and independently analyzing the various evaluation reports and the SSAC's award recommendation, the source selection authority (SSA) concluded that the benefits offered by LHI's proposal indeed outweighed its higher price. The agency thus made award to LHI. After a written debriefing, CHS filed this protest.¹

TECHNICAL EVALUATION

CHS's Proposal

CHS asserts that the evaluation was flawed because the agency improperly failed to remove various weaknesses after CHS addressed them in its discussion responses. The protester maintains that eliminating these weaknesses would have increased its ratings under the affected factors from acceptable to good.

In considering a protest of an agency's proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11.

The evaluation here was unobjectionable. For example, under the subfactor understanding PDHRA requirements (under the technical approach-PDHRA factor), proposals were evaluated on the offeror's ability to deliver, schedule, and process all

¹ CHS challenges the agency's award on numerous bases. We have considered them all and find that they have no merit or did not prejudice the protester. This decision addresses CHS's most significant arguments.

required PDHRA screenings. The PDHRA program is an outreach, assessment, and referral program, the purpose of which is to proactively identify health concerns that emerge over time following operational deployments, and include both physical and behavioral health needs. Performance Based Statement of Work (PBSOW) § 2.2.4. CHS's initial proposal received a strength under this subfactor based on its proposal of a network that included [deleted] behavioral health providers (BHP) with expertise in early identification of traumatic stress, post traumatic stress disorder (PTSD), and traumatic brain injury. Agency Report (AR), Tab 13, at 23. However, after one of CHS's subcontractors withdrew from its teaming agreement, the protester's FPR stated that this network was reduced to [deleted] BHPs; based on this information, the SSEB eliminated the original strength and added a weakness under this subfactor to reflect the low number of BHPs. In assigning this weakness, the SSEB noted that CHS now lacked BHPs in [deleted] and had only [deleted] BHPs in three other states. AR, Tab 34, at 11. The agency considered this a significant weakness in that it reflected a reduced capability to perform PDHRAs, and this resulted in the lowering of CHS's rating from good to acceptable for this subfactor and factor. Id.

CHS maintains that its proposal should not have been downgraded because its FPR advised the agency that the firm had engaged another subcontractor, as well as several professional staffing agencies, to handle staffing gaps in all locations. CHS FPR Cover Letter. However, notwithstanding these arrangements, the agency notes that CHS's failure to identify any coverage in [deleted] rendered its proposal noncompliant with the RFP's requirements. Contracting Officer's Statement at 7. The agency further notes that three of the four replacement agencies were already mentioned in CHS's initial proposal, and states that it found that the replacements introduced a new element of risk in the proposal. AR, Tab 35, at 4. In view of the significance of the change in CHS's BHP coverage, including the failure to provide coverage in [deleted], we think the agency reasonably could find that the changed coverage constituted a significant weakness in CHS's proposal.²

² CHS also asserts that the agency improperly double-counted its subcontractor loss by also considering it under factor 3--corporate and management capabilities. However, an agency properly may consider an element of a proposal under more than one evaluation criterion, so long as the element is reasonably related to all criteria under which it is considered. RAMCOR Servs. Group, Inc., B-276633.2 et al., Mar. 23, 1998, 98-1 CPD ¶ 121 at 9. CHS's proposal originally was assigned a strength under the factor 3 program management subfactor because the subcontractor it proposed had worked with TRICARE and, the agency concluded, would bring knowledge of that resource's capability to meet service members' needs. AR, Tab 13, at 24. With the loss of that subcontractor, the agency eliminated the strength. Since the subcontractor was relevant to CHS's proposal under both factors, the agency properly considered the loss of the subcontractor under both factors.

As another example, the agency's evaluation of CHS's proposal under subfactor 3.1--program management--was unobjectionable. Under this subfactor, offerors' ability to organize, plan, report, prioritize, schedule work, and exercise project control was to be evaluated. RFP at 96. Offerors were instructed to describe how they envisioned daily interaction and communication with the service components (SC) and contracting officer's representative. RFP § L.4.3.1. The scope of the PBSOW (RFP § C.1.1) included provision of health readiness support services to the SCs, including reserve and active components, and task 6 (information technology) required contractor interfaces with the different SC databases (RFP § C.2.2.6.2). In the initial evaluation, the agency criticized CHS's proposal for being "highly Army-centric" based on its references to daily interfacing with Army Reserve and National Guard leadership, and the absence of any mention of how CHS would interface with the other SCs--Air Force, Navy, and Marine Corps--covered by this procurement. Contracting Officer's Statement at 8; AR, Tab 13, at 25. The SSEB noted that there was no discussion of the Navy's primary deployment health website where PDHRAs are done for Navy and Marine personnel. AR, Tab 13, at 25. During discussions, the agency specifically asked CHS how its Army-centric approach applied to all SCs. Tab 19. In its response addressing the agency's concerns, CHS explained that it focused on the Army because of the number of Army-specific RFP requirements, and that it did not intend to be Army-centric. CHS FPR at I-19. In addition to referencing the scheduling and tracking systems to be used in support, CHS stated that it would work closely with each SC and referenced its replacement of an Army officer with an Air Force officer on its board of advisors, which already included a Navy representative. *Id.*; CHS FPR at III-5.

CHS maintains that the agency should have concluded that the role its board members "would almost certainly play in ensuring that [its] performance . . . was fully responsive to all service agency requirements." CHS Comments at 11. However, the SSEB found that CHS's discussion response was too general in nature; it spoke to the firm's intent to be customer-centric without including sufficiently specific information demonstrating a familiarity with the other SCs and how it would work with them. We find that the agency's concerns that remained following discussions were consistent with the evaluation scheme, and CHS has not established that those concerns were unreasonable. In particular, the agency reasonably could find that simply including an Air Force officer on the board of advisors, without more specific information in its proposal addressing the agency's "Army-centric" concern, was not sufficient to overcome that concern. We conclude that the agency reasonably determined that this weakness remained after discussions, and reasonably considered it in evaluating CHS's proposal.

As a final example, under factor 3--corporate and management capabilities--proposals were evaluated in part on offerors' proposed transition plan, including separate treatment of incoming and outgoing transitions. RFP § L.4.3.3. Among other requirements, proposals were to include a list of three recent healthcare-related transitions of similar size and scope, along with a brief description

of the work performed, transition timeframe, and customer point of contact. Id. CHS's initial proposal identified three recent transitions, but the evaluators assessed a weakness because two of the three were not transitions from incumbent contractors but, rather, were situations where the firm had expanded its client base within the same group of services or services for the same customer agency. AR, Tab 13, at 26. In discussions, the agency asked CHS to provide descriptions of two transitions from another vendor to CHS for programs similar to RHRP's scope and size. AR, Tab 19, at 1. While CHS provided two additional transition examples, the agency found that one actually had been included in the original proposal and did not appear to reflect a transition from another vendor, and that the other was much smaller in scope and size than the effort here. AR, Tab 33, at 19-20. As a result, the SSEB left the weakness in place in its final evaluation.

CHS asserts that the weakness was improperly assessed, but does not directly challenge the agency's evaluation of its transition examples. Instead, it argues that the agency improperly focused on transitions from other vendors and asserts that the agency overlooked or gave little credit for its thorough treatment of transitions in its FPR. This argument is without merit. CHS's transition plan was required to address incoming transitions, i.e. from another vendor to CHS, and its examples undisputedly fell short of establishing that experience for efforts of similar size and scope. This being the case, the agency reasonably assigned a weakness in this area. Moreover, with regard to the balance of CHS's transition plan, there is no indication that the agency ignored or gave too little weight to the firm's FPR. In this regard, the agency assigned the plan an acceptable rating overall under this subfactor, which included a strength for its transition team, and a finding that CHS's FPR corrected a weakness on key decision points and exit criteria. AR, Tab 33, at 19.

LHI's Proposal

CHS asserts that the evaluation of LHI's proposal unreasonably failed to take into account the impact of LHI's loss of a subcontractor. In this regard, CHS notes that the originally proposed subcontractor was responsible for some [deleted] PBSOW work allocation areas and accounted for approximately [deleted] health care providers (HCP). In the protester's view, LHI's proposal should have been downgraded based on its loss of this subcontractor.

This argument is without merit. The record shows that the agency was fully aware of LHI's loss of the subcontractor in question and the resultant effect on LHI's proposed staffing, but found that the loss did not significantly impact the firm's initial rating. Contracting Officer's Statement at 11. In this regard, LHI's initial proposal was rated exceptional under the understanding the requirement subfactor under factor 2 based on six evaluated strengths and no weaknesses or deficiencies. One of the strengths was assigned based on LHI's proposal of more than [deleted] HCPs, with [deleted] BHPs throughout all service areas, and [deleted] on-site PDHRA teams, all of which improved the scheduling of events, timely assessment of service

members, and efficient use of resources. AR, Tab 13, at 14. In the final evaluation, the agency still considered these proposed resources to be a strength; although the loss of its subcontractor resulted in a reduction of [deleted] in the number of proposed HCPs, LHI still had more than [deleted] providers to cover requirements. See AR, Tab 33, at 6. Since the record shows that the remaining teams and providers that led the agency to assign this strength were unaffected, and the five other original strengths were unchanged, we find nothing unreasonable in the agency's determination that LHI's rating under this subfactor should not be lowered.

Similarly, under the factor 1 subfactor PHA general requirements, LHI's proposal received an initial rating of good based on eight evaluated strengths and three weaknesses. AR, Tab 13, at 12. Following discussions, LHI was found to have corrected one weakness and partially corrected the other two. In the final evaluation, the agency noted the loss of the subcontractor and added a third weakness. The agency did not lower LHI's rating under the subfactor, however, because it determined that the loss of the subcontractor did not significantly impact the previous rating. Contracting Officer's Statement at 11. Further, the record shows that, although [deleted] work allocation areas under the PBSOW had been identified as the responsibility of the subcontractor, LHI had consistently identified [deleted] as responsible for all PBSOW areas, and two of its other proposed subcontractors as responsible for [deleted] of the areas as well. LHI Initial Proposal and FPR at 6. In view of LHI's and its other subcontractors' coverage of all work allocation areas and the remaining strengths and corrected weaknesses, the agency reasonably determined that LHI's rating under this subfactor should not be lowered.

MEANINGFUL DISCUSSIONS

CHS asserts that the agency failed to provide it with meaningful discussions regarding weaknesses under factor 1—technical approach PHA. It maintains that the agency's discussion questions regarding vaccines, cardiovascular screening, and phlebotomy services did not reasonably alert the firm to the specific issues of concern to the agency.

When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, must lead the offeror into the areas of its proposal that require correction or amplification. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8. An agency need not "spoon-feed" an offeror as to each and every item that must be revised or addressed to improve the submission. Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 9.

The discussions here were meaningful. For example, the agency asked CHS to describe its processes for minimizing vaccine waste and cost. CHS states that it understood the agency's area of concern to be the treatment of expired vaccines, and asserts that the agency was required to clearly state that its concern was with

recovery of unused vaccines. We disagree. The recovery of unused vaccines clearly is directly related to the agency's discussion question focusing on minimizing vaccine waste and cost. As another example, the PBSOW established requirements for cardiovascular screening based on various parameters, such as screening for all service members age 40 and above in the Army Reserve and National Guard (§ C.2.2.2.4.5), and for Navy and Marine Reserve personnel, screening for males at age 35 and females at age 45 (§ C.2.2.2.4.6). CHS's initial proposal only identified screening for service members [deleted], and the agency thus asked CHS to more fully explain its proposed program for cardiovascular screening. In its FPR, CHS failed to address the differing Navy and Marine requirements. In light of the specific identification of the differing requirements for cardiovascular screening among the different SCs in the RFP, and CHS's responsibility for addressing all PBSOW requirements in its proposal, the agency's discussion question was sufficient to draw the firm's attention to the area of its proposal needing amplification.

PRICE EVALUATION

CHS asserts that the agency failed to properly evaluate LHI's price for reasonableness. Specifically, CHS notes that more than 100 of LHI's individual medical procedure prices exceeded the agency's independent government cost estimates (IGCE), and that LHI's overall price exceeds the agency's average IGCE.

Where, as here, a solicitation provides for award of a fixed-price contract—under which the government's liability is fixed and the contractor bears the risk and responsibility for the actual costs of performance—the agency need only evaluate an offeror's price for fairness and reasonableness. Federal Acquisition Regulation (FAR) §§ 15.402(a), 15.404-1(a); SAMS El Segundo, LLC, B-291620.3, Feb. 25, 2003, 2003 CPD ¶ 48 at 8. Agencies may use various price analysis techniques and procedures to ensure a fair and reasonable price, including the comparison of proposed prices received in response to the solicitation and comparison with an IGCE. FAR § 15.404-1(b)(2)(i), (v). Agencies may rely upon adequate price competition alone to assess price reasonableness. MVM, Inc., B-290726 *et al.*, Sept. 23, 2002, 2002 CPD ¶ 167 at 6. A price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment by the contracting officer that we will question only where it is unreasonable. The Right One Co., B-290751.8, Dec. 9, 2002, 2002 CPD ¶ 214 at 5.

The price reasonableness evaluation here, based on adequate price competition and a comparison of prices with the agency IGCEs, complied with the RFP's requirements and was unobjectionable. The RFP provided that price was to be evaluated for completeness and reasonableness and to ensure that the offeror understood the scope of work. RFP at 97. In evaluating offerors' prices, the agency compared each offeror's individual line item prices to those of the other offerors and

to the agency's IGCEs, which represented both the low and high range of estimated costs for each medical and dental procedure.³ LHI's initial overall price was approximately 19 percent higher than the average IGCE, and CHS's approximately 2 percent higher, and the agency found that both prices were reasonable based on adequate price competition and its conclusion that the prices were within a reasonable range of the average IGCE. AR, Tab 17, at 3. In discussions, the agency requested both offerors to review their work scope and pricing for certain individual procedures whose prices were lower than the low range IGCE or higher than the high range IGCE. Both offerors changed some, but not all, identified prices, and also reduced their overall prices, resulting in LHI's price being 11.05 percent higher than the average IGCE, and CHS's 0.10 percent higher. AR, Tab 32, at 3-4, 8. The agency again found that there was adequate price competition, and that both offerors' overall prices were within a reasonable range of the average IGCE. While CHS asserts that LHI's price was too far above the average IGCE to be considered reasonable, as noted by the agency, LHI's price was lower than the agency's high range IGCE. Given this fact, we find no basis to object to the agency's price evaluation. CHS's disagreement with the agency's judgment does not make the evaluation unreasonable. Hughes Georgia, Inc., B-272526, Oct. 21, 1996, 96-2 CPD ¶ 151 at 7.⁴

SOURCE SELECTION

CHS asserts that the best value determination was flawed because there is no indication that the SSA considered and evaluated the significant price difference between the proposals in light of the closeness of their technical evaluation ratings--

³ The IGCEs were based on historical data, Champus Maximum Charge rates, the Medicare Economic Index, and future projections of utilization of RHRP services. AR, Tab 17 at 3.

⁴ In challenging the agency's reasonableness determination, CHS also points to the fact that LHI's FPR included some 113--out of 241 total--procedure prices that were higher than the high range IGCEs for those individual procedures. However, the agency was fully aware of these high prices and ultimately decided that the fact that LHI's total price was within the range of the low and high IGCE, rather than the individual prices, was determinative. This was within the agency's discretion. In any event, the agency found that CHS also proposed a significant number--81 in its FPR--of individual procedure prices that exceeded the high range IGCEs. It thus does not appear that CHS was prejudiced by any flaw in the agency's evaluation. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3 (GAO will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions); see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

only one adjectival level apart. CHS maintains that such an analysis would result in a finding that its proposal represented the best value.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results; their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. Chemical Demilitarization Assocs., B-277700, Nov. 13, 1997, 98-1 CPD ¶ 171 at 6. Where, as here, the RFP allows for a price/technical tradeoff, the selection official retains discretion to select a higher-priced but technically higher-rated submission, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. 4-D Neuroimaging, B-286155.2, B-286155.3, Oct. 10, 2001, 2001 CPD ¶ 183 at 10. The propriety of a tradeoff depends not on the mere difference in technical scores or ratings, but on the reasonableness of the source selection official's judgment concerning the significance of the difference. Digital Sys. Group, Inc., B-286931, B-286931.2, Mar. 7, 2001, 2001 CPD ¶ 50 at 7.

The tradeoff here was reasonable. While the decision document did not list the specific differences between the proposals or the dollar amount of the price difference, it is clear from the record that the SSA considered them prior to making her decision. In this regard, the SSA's decision states that she reviewed the SSEB consensus report, the SSEB chairperson's report, and the SSAC's recommendation memorandum. AR, Tab 36. These reports identify the various strengths and weaknesses of the competing proposals and provide detailed information that goes well beyond the proposals' adjectival ratings. In this regard, the SSAC's recommendation includes a chart that details each offeror's different prices for the various line items and totals, as well as individual and total percentage differences between their prices and the average and high IGCEs. AR, Tab 35, at 2. The technical differences in the proposals were further discussed in the SSAC's recommendation, which identified six specific areas where LHI's proposal exceeded CHS's in terms of crucial aspects of the RHRP. For example, the SSAC noted LHI's more than [deleted] standard operating procedures (SOP) directly applicable to the RHRP, as compared to CHS's failure to mention any existing relevant SOPs; LHI's possession of [deleted] of the 58 required vaccine distribution licenses, as compared to CHS's proposal's silence on the subject; and differences in the identification and depth of experience of the offerors' respective management teams. Id. at 3-4. The SSAC also specifically noted each offeror's loss of a subcontractor, but noted the limited impact this had on LHI's proposal (continued provision of some [deleted] HCPs, including [deleted] BHPs) compared to CHS's [deleted] medical HCPs and "dramatically" reduced number of BHPs. Id. at 4. The SSAC noted that any interruption in or degradation of services would have a "disastrous effect" on the ability of the reserve forces to manage medical readiness, assess deployability, and deploy medically qualified SMs in the required numbers. Id. at 3. The SSAC found greater risks associated with award to CHS, despite its lower price, based on the

identified differences in the proposals, and concluded that LHI's superior proposal with minimal performance risks outweighed its price premium.

After applying a "rational and independent analysis of the reports and memorandum documenting the evaluation of each Offeror's proposal," the SSA concluded that the SSAC's recommendation for an award to LHI was proper and in the best interests of the government. AR Tab 36. She specifically noted the 10.94 percent price premium associated with LHI's proposal, but concluded that "the benefits offered by LHI outweigh the additional cost of contract performance." Id. The SSA also noted LHI's demonstrated successful provision of required medical readiness services over the past 6 years. Id. Even though the SSA did not repeat the specific advantages, disadvantages, and relative risks associated with the competing proposals, since she was fully briefed on all of those matters, including the specific technical and price differences between the proposals, and she considered the underlying evaluation and recommendation record, we find nothing unreasonable in the SSA's best value determination. FAR § 15.308 (SSA may use reports and analyses prepared by others and documentation need not quantify the tradeoffs that led to decision).

The protest is denied.

Gary L. Kepplinger
General Counsel