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Decision

Matter of: NaphCare, Inc.

File: B-406695; B-406695.2

Date: August 3, 2012

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William T. Hassler, Esq., Michael J. Navarre, Esq., Peter L. Wellington, Esq., and Lauren E. Groth, Esq., Steptoe & Johnson LLP, for Seven Corners, Inc., the intervenor.

William Robinson, Esq., and Oleta Thomas, Esq., Department of Justice, for the agency.

Linda C. Glass, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's evaluation and selection decision is denied where the record demonstrates that the evaluation and source selection decision were reasonable and consistent with the solicitation's evaluation criteria.

DECISION

NaphCare, Inc., of Birmingham, Alabama, protests the award of a contract to Seven Corners, Inc., of Carmel, Indiana, under request for proposals (RFP) No. P02011000002, issued by the Department of Justice, Federal Bureau of Prisons (BOP), for comprehensive medical services for the Federal Correctional Complex in Allenwood, Pennsylvania. The protester objects to the agency's evaluation and selection decision.

We deny the protest.

BACKGROUND

The RFP, issued on December 20, 2010, provided for the award of a requirements type contract with fixed unit prices for comprehensive medical services for inmates at the Allenwood Federal Correctional Complex for a base year and 4 option years.

The RFP provided for award on a best value basis, considering the following factors: technical; past performance; small disadvantaged business (SDB) participation; and price. RFP at 39-40. Offerors were informed that technical and past performance factors were of equal value and that SDB participation factor was less important than either the technical or past performance factor. Id. at 39. The non-price factors combined were stated to be approximately equal to price. Id.

With respect to the technical factor, offerors were informed that the agency would assess the offeror's approach to providing an appropriate mix of resources to deliver quality medical care to the inmates of the Federal Correctional Complex while mitigating the government's cost and security risks.¹ RFP at 39. The technical factor included the following equally weighted subfactors:

1. Level of diversity of services proposed;
2. Driving distance and conditions to and from the community-based providers;
3. Accreditation status of the proposed contract facility(s).
4. Enhancements to the basic contract requirements proposed by the offeror which will facilitate the [Federal Correctional Complex's] ability to conform to the BOP's stated mission.

Id. at 39-40.

The past performance factor included the following equally weighted subfactors: quality of product or service; timeliness of performance; business relations; and customer satisfaction.² Id. at 40.

The RFP identified the following pricing categories, which the RFP stated were in descending order of importance: inpatient facility services, outpatient facility services; outpatient physician services; outpatient institution services – other physicians; inpatient physician services; and outpatient institution services – prosthetic/orthotics adjustments. Although the RFP identified estimated quantities

¹ The agency rated proposals under the technical factor as exceptional, very good, satisfactory, marginal, or unsatisfactory. Agency Report (AR), Vol. I, Tab 4, Source Selection Plan, at 3-4. A satisfactory rating indicated that the diversity of services offered was anticipated to meet many of the government's needs and the proximity of the provider network was such that travel time would be moderate. Id.

² Past performance was rated as exceptional, very good, satisfactory, marginal, unsatisfactory or neutral. AR, Vol. I, Tab 4. Source Selection Plan, at 5-6.

for the pricing categories, the RFP did not provide for calculating an overall total price. See id. at 4-9. Rather, offerors were informed that the offeror providing the largest discount from the Medicare rate in a particular category would be considered to be offering the lowest price in that category. Id. at 39. For all other items, the offeror proposing the lowest unit price would be considered to be offering the lowest price in each category.³ Id. at 41.

The agency received six proposals. In this regard, Seven Corners submitted three proposals, and NaphCare submitted one proposal. NaphCare proposed in its initial proposal to use [Deleted] ([Deleted] miles from Allenwood) and [Deleted] ([Deleted] miles) as primary facilities with [Deleted] ([Deleted] miles) and [Deleted] ([Deleted] miles) for outpatient services only. See AR, Vol. I, Tab 25, Source Selection Decision, at 1. Seven Corners proposed in its initial proposal to use [Deleted] ([Deleted] miles), [Deleted] ([Deleted] miles), [Deleted] ([Deleted] miles) and [Deleted] ([Deleted] miles) for both inpatient and outpatient services. Id. at 7.

The agency's technical evaluation panel (TEP) evaluated the firms' proposals under the technical factor. The contracting officer, the source selection authority (SSA) for this procurement, evaluated the proposals under the past performance and SDB participation factors, and evaluated the firms' proposed prices. The agency decided to conduct discussions and established a competitive range that included the proposals of four firms, including NaphCare and Seven Corners.⁴ Contracting Officer's Statement at 7.

The agency asked NaphCare during discussions to address the participation of the facilities in the [Deleted] (which includes [Deleted]). AR, Vol. I, Tab 21, Discussions with NaphCare, at 3. NaphCare was also requested to reconsider offering the services of ophthalmologist, physical therapist and psychiatrist and to define the weekly hours/duties of the on-site scheduler. Id. NaphCare was also requested to provide more detail concerning its offer of a [Deleted] at [Deleted]. Id.

³ To consider offerors' prices in accordance with the weighting identified in the RFP, the agency assigned points (totaling 100 maximum points) to each pricing category in accordance with the weighting identified in the solicitation. Accordingly, the most important category, inpatient facility services, was assigned [Deleted] points, and second most important category, outpatient facility services, was assigned [Deleted] points, and each successive category was assigned less points. The lowest rate or price in a particular category would be assigned the maximum number of points in that category, and other rates and prices would receive a proportional share of points. See AR, Vol. I, Tab 4, Source Selection Plan, at 6.

⁴ The agency included one of Seven Corners' three proposals.

BOP received and evaluated revised proposals.⁵ In its revised proposal, NaphCare addressed the agency's concerns about the on-site scheduler and the [Deleted]. With respect to the use of the [Deleted] facilities, NaphCare informed BOP as follows:

NaphCare understands we have a significant weakness in our proposal by not offering all the services available within the [Deleted]. Currently, due to the contract terms with the system, we are only able to offer the [Deleted]. NaphCare has an agreement with [Deleted] that covers all [Deleted] hospitals and all level of services and if an award is made to us, [Deleted] will be available to the [Federal Correctional Complex] at a [Deleted].⁶

AR, Vol. II, Tab 3, NaphCare Revised Proposal Cover Letter, at 1.

The agency held additional discussions with NaphCare and requested that NaphCare reconsider offering all facilities/physician providers under the [Deleted] network and that offering inpatient physician services under a facility out of network was a significant weakness. AR, Tab 21, Discussions with NaphCare, at 9.

In response to the agency's request for final proposal revisions, NaphCare submitted two revised proposals: NaphCare A and NaphCare B. BOP only considered the NaphCare A proposal because the NaphCare B proposal was received late.⁷ The protester's NaphCare A proposal included inpatient facility services at [Deleted] and [Deleted] with alternate outpatient facility services available at [Deleted] and [Deleted]. Id. NaphCare stated that it was removing [Deleted] in its entirety along with the affiliated physicians. Id. NaphCare again stated that it understood that not offering all services available within the [Deleted] was a significant weakness. AR, Vol. II, Tab 5, NaphCare's Final Revised Proposal Cover letter, at 1.

⁵ Seven Corners submitted its revised proposal late, and it was not evaluated. The agency, however, considered Seven Corners' initial proposal. Contracting Officer's Statement at 7.

⁶ The Contracting Officer states that this indicated that any additional services ([Deleted]) provided by [Deleted] would be at a [Deleted] and would need to be addressed/negotiated (case-by-case basis) after an award and ultimately could be a higher rate than the awarded contract rates. Contracting Officer's Statement at 9.

⁷ The NaphCare B proposal included inpatient and outpatient facility services at [Deleted]. AR, Vol. II, Tab 4, NaphCare's Final Proposal Revision Cover letter, at 1. NaphCare stated in this proposal that NaphCare could not provide other hospitals in the [Deleted] network because the [Deleted]. Id.

The firms' final revised proposals were evaluated by the TEP and SSA. During the course of his evaluation, the SSA asked the TEP chair to provide him with the agency's current utilization rates for area hospitals. See AR, Vol. I, Tab 23, SSA Email to TEP Chair, Feb. 24, 2012. The TEP chair identified the agency's utilization rates as follows: Williamsport – [Deleted]; Divine – [Deleted]; Muncy – [Deleted]; Evangelical – [Deleted]; Bloomsburg – [Deleted]; Jersey Shore – [Deleted]; and Sunbury – [Deleted]. Id. The SSA states that the intent of the request was to get a better understanding of where the inmates were receiving services and the importance of the [Deleted] being offered at [Deleted] by NaphCare. Contracting Officer's Statement at 10.

Final revised proposals were evaluated as follows:

	Offeror A	Offeror B	Seven Corners	NaphCare
Technical	Satisfactory	Satisfactory	Satisfactory	Marginal
Past Performance	Very Good	Very Good	Exceptional	Very Good
SDB Participation	Very Good	Very Good	Marginal	Very Good
Price	90.447	90.775	85.745	99.262

Contracting Officer's Statement at 11.

The SSA determined that the final revised proposals of Seven Corners and Offerors A and B were essentially equal, because all three offerors proposed a wide variety of facilities and physician services that were estimated to meet all of the requirements. AR, Vol. I, Tab 25, Initial Source Selection Decision, at 10. The SSA concluded that these firms' offers of multiple points of delivery for inpatient facility services provided a security benefit to the agency. Id. The SSA found that NaphCare's final revised proposal "suffer[ed] primarily from its limited diversity of facility services" close to the Allenwood Federal Correctional Complex and that based on the agency's current utilization rates, under the NaphCare proposal most of the inmates in the Allenwood Federal Correctional Complex would have to be transported a prolonged distance, which represented a significant security risk. Id. The SSA decided that Offeror A's proposal reflected the best value and that this firm's price premium was merited given the security risks represented by the NaphCare proposal. Id.

Following his initial selection decision, the SSA rejected the revised proposals of Offerors A and B. See Contracting Officer's Statement at 11. The SSA prepared a new selection decision, comparing the revised proposals of NaphCare and Seven Corners. AR, Vol. I, Tab 26, Amended Source Selection Decision, at 4. Again the SSA concluded that NaphCare's primary weakness was the limited diversity of facility services proposed by NaphCare close to the Allenwood Federal Correctional Complex. Id. at 6. The SSA noted that Seven Corners' evaluated price was higher than NaphCare's, but that Seven Corners provided an expanded network of services

within a driving distance of 32 miles that mitigated costs and security risks presented by the NaphCare proposal. Id. The SSA determined that given the inherent dangers of transporting inmates for prolonged periods outside of a secure perimeter, and the relatively minor differences in pricing between Seven Corners' and NaphCare's proposals, Seven Corners' revised proposal presented the best value to the agency. Id.

Award was made to Seven Corners, and NaphCare protested to our Office, following a debriefing.

DISCUSSION

The protester raises numerous arguments challenging the agency's evaluation of its proposal and its selection decision. We have reviewed the record in light of the protester's numerous allegations and find nothing unreasonable about the agency's evaluation of proposals or the selection decision.

NaphCare first complains that BOP's assessment that the protester's proposal was marginal under the technical factor was unreasonable. In this regard, NaphCare notes a number of aspects of its proposal, which the protester contends should have been found acceptable, and contends that it should have received an satisfactory, rather than marginal, rating under the technical factor. For example, NaphCare notes that the TEP assessed as a strength in its proposal under the level of diversity of services subfactor that NaphCare offered a vast variety of off-site specialists and subspecialists. See Protester's Comments and Supp. Protest at 3-4; see also AR, Vol. I, Tab 11, NaphCare Final Consensus Evaluation, at 22.

In reviewing protests of alleged improper evaluations and source selection decisions, it is not our role to reevaluate submissions; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 3. A protester's mere disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3. With respect to color or adjectival ratings, we have recognized that they are merely guides for intelligent decision-making in the procurement process. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11. Where an agency reasonably considers the underlying bases for the ratings, including the advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and consistent with the terms of the solicitation, the protester's disagreement over the adjectival or color ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. Sherrick Aerospace, B-310359.2, Jan. 10, 2008, 2008 CPD ¶ 17 at 6.

Here, the record shows that SSA's judgment as to the respective technical merit of NaphCare's and Seven Corners' proposals was based primarily on the limitations of the protester's proposed hospital network, including its primary hospital, [Deleted], as compared to Seven Corners' proposed network. The SSA noted that NaphCare proposed two hospitals, [Deleted], for inpatient services, see AR, Vol. I, Tab 25, Source Selection Decision, at 1, where Seven Corners proposed [Deleted] and four additional hospitals for inpatient services. Id. at 7. Also, NaphCare proposed 4 hospitals for outpatient services, one of which was [Deleted] miles away from Allenwood, see id., where Seven Corners proposed 6 hospitals for outpatient services, the largest of which was only 14 miles from Allenwood. Id. at 7, 8. NaphCare identified a total of [Deleted] physicians in [Deleted] specialties while Seven Corners identified 461 physicians in 43 specialties. Id. at 2, 7. The SSA concluded that Seven Corners' proposal presented more technical merit because Seven Corners proposed a wide variety of facilities that would meet all of Allenwood's requirements and that Seven Corners' proposal of multiple points of delivery of inpatient facility services was a security benefit. In contrast, the SSA found that the NaphCare solution would be able to meet 25 percent of the requirements within a 32-mile distance and would likely be able to provide the remainder of the requirements, but at a facility that was approximately [Deleted] miles away, which represented a security risk.

Although the protester disagrees with the SSA's judgment and argues that its proposal deserved a higher adjectival rating, it has not shown that the evaluation or selection decision was unreasonable. Whether or not the protester's proposal deserved a higher rating, the record shows that the SSA reasonably evaluated the underlying merit of both firms' proposals and reasonably determined that Seven Corners' proposal reflected technical superiority.⁸

NaphCare also complains that the SSA's consideration of the agency's current utilization rates of various local hospitals was unreasonable because the SSA treated these rates as reflecting the upper limit of the number of inmates each local hospital could handle and otherwise failed to consider NaphCare's proposed capacity to provide necessary services. See Protester's Comments and Supp.

⁸ Contrary to NaphCare's belief, the assignment of a strength under the level of diversity subfactor for offering "a vast variety of off-site specialists and subspecialists," see AR, Vol. I, Tab 11, NaphCare Final Consensus Evaluation, at 22, is not inconsistent with the TEP's determination that NaphCare's proposed hospital network was limited. In this regard, the TEP noted a number of weaknesses arising from NaphCare's limited network, including under the level of diversity of services subfactor. Under that subfactor, the TEP noted, among other things, that NaphCare proposed [Deleted] for primary services, but that [Deleted] did not have required subspecialists. Id.

Protest at 24-25. NaphCare also argues that the record does not reflect a reasoned judgment as to whether the agency's past utilization rates were "meaningfully predictive of future utilization rates." Id. at 27. NaphCare also complains that the agency's evaluation and selection decision reflected an unstated preference for the [Deleted] hospital. Id. at 29-32.

Here, the record contains a detailed source selection decision, explaining the basis of the SSA's judgment that Seven Corners' proposal reflected the best value to the agency considering technical merit and price. Contrary to the protester's arguments challenging the SSA's reliance on the agency's current utilization rates for local hospitals, the record shows that the SSA merely used these utilization rates to measure the potential performance risks to the agency presented by NaphCare's more limited hospital network. Although NaphCare disagrees with the SSA's judgment concerning the protester's more limited hospital network, this disagreement does not show that the SSA unreasonably concluded that NaphCare's proposal presented greater performance risk than Seven Corners more expansive network.

NaphCare also protests that the SSA failed to meaningfully consider price in his selection decision. Specifically, NaphCare complains that the SSA never determined what the cost of performance would be under the firms' respective proposals. See Protester's Comments at 28. Although NaphCare is correct that the agency did not determine a total evaluated price for each offeror, this was consistent with the RFP price evaluation scheme. The RFP provided that agency would evaluate offerors' proposed rates under various pricing categories, which were identified in descending order of importance in the RFP. See RFP at 4-9, 39. The RFP did not provide for calculating or evaluating an overall proposed price. See id. at 39. If NaphCare disagreed with this pricing evaluation scheme, it should have protested this alleged solicitation impropriety before the closing time for receipt of

initial proposals. 4 C.F.R. § 21.2(a)(1) (2012); Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 4-5.

The protest is denied.⁹

Lynn H. Gibson
General Counsel

⁹ The protester also argues that the agency failed to conduct meaningful discussions regarding NaphCare's on-site scheduler. Comments and Supplemental Protest at 38. The protester contends that it was prejudiced by the alleged lack of meaningful discussions, maintaining that it could have proposed a full-time on-site scheduler. We conclude that NaphCare has not established it was prejudiced by the alleged impropriety. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is not a basis for finding prejudice, and our Office will not sustain the protest. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7. The record shows that there is no reasonable possibility that NaphCare's proposal of a full-time on-site scheduler would have affected the SSA's selection decision here. As explained above, the basis for the SSA's selection of Seven Corners' proposal over NaphCare's was that NaphCare did not provide the diversity of service that Seven Corners offered.