



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: OMV Medical, Inc.; Saratoga Medical Center, Inc.

File: B-281388; B-281388.2; B-281388.3

Date: February 3, 1999

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Jonathan M. Bailey, Esq., for Professional Performance Development Group, Inc., an intervenor.

Clarence D. Long, III, Esq., and Capt. David A. Whiteford, Department of the Air Force, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Determination to select lowest priced technically acceptable proposal for award of contract, and determination that the awardee's prices were realistic are unobjectionable where both determinations were made in a manner consistent with the evaluation criteria, and the awardee's professional compensation plan and base salaries compared favorably with other offerors and with the current average annual salary standard.
2. Agency did not relax solicitation's adequate compensation requirements and did not misleadingly cause offeror to maintain (rather than lower) its proposed professional compensation, where the agency was consistent in the concerns it raised with offerors about professional compensation, and made award to an offeror whose professional compensation compared favorably with the current average salary standard and the Bureau of Labor Statistics Occupational Outlook Handbook, and was actually higher than the protester's.
3. Firms which offered the third and fourth lowest prices of six technically equal proposals are not interested parties to protest that the contracting agency improperly evaluated the awardee's proposal since, as provided by the solicitation,

price properly was the determinative factor for award and the protesters would not be in line for award if the allegation were sustained.

DECISION

OMV Medical, Inc. and Saratoga Medical Center, Inc. protest the award of a contract to Professional Performance Development Group, Inc. (PPDG) under request for proposals (RFP) No. F41622-98-R-0017, a competitive small disadvantaged business set-aside, issued by the Department of the Air Force to acquire clinical social services under the Family Advocacy Program (FAP) for Air Force personnel and their families in the Continental United States (CONUS), Eastern region. Both protesters principally assert that the agency failed to adhere to the RFP's announced evaluation standard, relaxed the RFP's adequate compensation requirements, failed to meaningfully evaluate price realism and misled them into failing to reduce their proposed professional compensation. The protesters also contend that the Air Force engaged in prejudicially unequal discussions with certain offerors.

We deny the protests.

BACKGROUND

The RFP, issued July 7, 1998, called for offerors to provide Family Advocacy Treatment Managers, Family Advocacy Outreach Managers, Family Advocacy Nurse Specialists and Family Advocacy Program Assistants as needed, specifying estimated quantities and locations for military bases in the CONUS Eastern region. RFP § B. The RFP contemplated award of a fixed-price, indefinite-quantity contract for a base year with four 1-year options and stated that the agency would employ performance/price tradeoff techniques to make a best value award decision. RFP § M.4.a. The RFP went on to state that, if the technically acceptable offeror submitting the proposal with the lowest evaluated price received a low performance risk rating and was found responsible, that proposal would represent the "best value." RFP § M.4.b.4. The RFP provided that award could be made to other than the offeror that submitted the lowest priced technically acceptable proposal if that offeror was "judged to have a moderate, high, or not applicable performance risk rating." RFP § M.4.b.5. Concerning past performance, the RFP stated that a performance risk assessment would be conducted and required offerors to submit information on relevant contracts performed within the last 3 years which demonstrate their ability to perform the proposed effort.¹ RFP § L.901, Vol. IIIa.

¹Section M of the RFP stated that the purpose of the past performance evaluation was to identify and review relevant present and past performance and provided that past and present performance information would be obtained through the use of simplified questionnaires or telephone interviews and using data independently obtained from other government and commercial sources. RFP § M.3.

The RFP further provided for an evaluation of the price proposals for realism. RFP § M.2.

The solicitation required offerors to submit a total compensation plan setting forth base salaries and fringe benefits proposed for the professional employees. RFP § L.901, Vol. II.b § 6. Offerors were cautioned that the government was concerned with the quality and stability of the workforce and that professional compensation that was unrealistically low or not in reasonable relationship with the various job categories might impair the contractor's ability to attract and retain competent professional service employees, and could be viewed as evidence of failure to comprehend the complexity of the requirements. RFP § L-95.c.

The RFP also provided for offerors to demonstrate through oral presentations how they planned to meet the stated RFP requirements, and to show that the offeror had the necessary understanding, expertise, personnel and experience to successfully accomplish the work required in the statement of work. RFP § L.901, Vol. I. Six firms whose proposals had been determined technically acceptable for the FAP acquisition for either the European or the CONUS Western regions were exempted from making oral technical presentations for this procurement. RFP § L.901, Vol.I and Amendment No. 0001. They were required, however, to submit documentation regarding the qualifications of their proposed program managers.

On August 7, 1998, the agency received seven proposals, and OMV and PPDG made technical presentations on August 18. On August 25, five offerors, including Saratoga, were advised that their proposed base salaries for some of the labor categories were unrealistically low. PPDG was specifically advised that its salaries for the treatment manager and outreach manager categories for the CONUS Eastern region were at least [deleted] below the current average annual salaries, and that for program assistants its salaries were approximately [deleted] below the current range. Agency Report, Tab 5a. Saratoga was advised that its proposed salaries for the treatment manager for the CONUS Eastern region were at least [deleted] below the current average annual salaries. Agency Report, Tab 5b. The contracting officer concluded that proposal revisions were needed from these five offerors to ensure their complete understanding of the requirements. Agency Report, Tab 8. After receipt and evaluation of the five revised proposals, all seven offerors were included in the competitive range. All offerors were given the opportunity to submit final proposal revisions by September 8. The final evaluation of offers was as follows:

<u>OFFEROR</u>	<u>TECHNICAL</u>	<u>PRICE</u>	<u>PERFORMANCE RISK</u>
A	Acceptable	[deleted]	Low
PPDG	Acceptable	[deleted]	Low
B	Acceptable	[deleted]	Low
OMV	Acceptable	[deleted]	Low
Saratoga	Acceptable	[deleted]	Low
C	Acceptable	[deleted]	Low
D	Acceptable	[deleted]	Low

Agency Report, Tab 2.

With respect to Offeror A, which submitted the lowest priced qualifying proposal, the Small Business Administration advised the agency that the firm was not eligible for award of a small disadvantaged business set-aside. Accordingly, on October 15, the award was made to PPDG on the basis that it had submitted the lowest priced technically acceptable proposal with a low performance risk, and these protests followed.

OMV's PROTEST

OMV's first complaint is that the agency improperly changed the basis for award from best value to one based on low price.

The RFP, as outlined above, stated that the agency would make a "best value award," which the RFP went on to specify meant selection of the offeror submitting the lowest priced technically acceptable proposal if it also received a low performance risk rating. The RFP provided for a performance/price tradeoff only if the offeror submitting the lowest priced technically acceptable proposal was judged to have a moderate, high or inapplicable performance risk rating. Here, the lowest priced technically acceptable proposal also received a low performance risk rating and in accordance with the RFP represented the best value to the government. Accordingly, the award to PPDG was consistent with the RFP award criteria.

Next OMV contends that the agency materially misled it by cautioning it against lowering professional compensation from levels under predecessor contracts for essentially the same professional work and then failing to meaningfully evaluate all offerors' proposed professional compensation plans, and that the agency relaxed the RFP's adequate compensation requirements.

We review an agency's evaluation of proposals to ensure that it is fair, reasonable, and consistent with the evaluation criteria stated in the solicitation. Wind Gap Knitwear, Inc., B-261045, June 20, 1995, 95-2 CPD ¶ 124 at 3. Here, the record establishes that OMV was not "misled" since the agency reasonably evaluated the offerors' proposed compensation plans, and did not relax the RFP's adequate

compensation requirement. As noted above, the RFP warned all offerors about the government's need for a high quality, stable workforce and that proposed professional compensation that was unrealistically low or not in reasonable relationship with the various job categories might impair the contractor's ability to attract and retain competent professional service employees, and could be viewed as evidence of failure to comprehend the complexity of the requirements. RFP § L-95.c. To ensure that an adequate compensation plan was offered, a salary standard for the CONUS Eastern region was developed. Agency Report, Tab 7. In this regard, the agency requested from current contractors the average annual salaries paid to current employees by position. *Id.* The lowest average salaries paid by position for the CONUS Eastern region were used to establish the minimum salary requirements for purposes of proposal evaluation. *Id.* After receiving initial proposals, the agency in its evaluation found deficiencies in the proposed compensation rates for five of the seven proposals received. These five offerors were advised that their proposed compensation was considered inadequate to obtain and keep suitably qualified professional employees. After receipt of final proposal revisions, the evaluation team analyzed compensation levels per position and on an overall basis. The final total annual salaries proposed by the awardee and the protesters were as follows:

<u>POSITION</u>	<u>PPDG</u>	<u>SARATOGA</u>	<u>OMV</u>
Treatment Manager	[deleted]	[deleted]	[deleted]
Outreach Manager	[deleted]	[deleted]	[deleted]
Nurse	[deleted]	[deleted]	[deleted]
Assistant	[deleted]	[deleted]	[deleted]
Total Annual Compensation	[deleted]	[deleted]	[deleted]

Agency Report, Tab 2.

The offerors' proposed compensation was compared between offerors and was also compared to the Air Force's current average annual salary standard for each labor category and to the Occupational Outlook Handbook. Moreover, PPDG's salary for every professional category is higher than those of both OMV and Saratoga, and the total salary compensation for all three offerors is approximately equal, which by itself strongly suggests that OMV's objection in this regard is factually misplaced.²

²OMV asserts that the program assistant position is a professional position subject to the requirement of § L-95 of the RFP. The agency maintains that because the program assistant position is primarily clerical and administrative in nature it is not subject to the professional compensation clause. Program assistants were required to have completed a teacher certification program, or to have an associate degree in
(continued...)

Further, as the record shows, the agency did not relax the professional compensation requirement and reasonably evaluated the offerors' proposed professional compensation for all offerors in a reasonable and consistent manner.

OMV also contends that the agency arbitrarily neutralized past performance as an evaluation discriminator by according all offerors "low risk" performance ratings regardless of experience, which was allegedly prejudicial to OMV as the incumbent.

Where a solicitation requires the evaluation of offerors' past performance, an agency has discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. Federal Envtl. Servs., Inc., B-250135.4, May 24, 1993, 93-1 CPD ¶ 398 at 12. Here, the main purpose of the past performance evaluation was for the agency to identify and review relevant present and past performance in order to make an overall risk assessment of the offeror's ability to perform the requirement. RFP § M.3.c. In order to do so, the agency sent questionnaires to a minimum of two references provided by each offeror. Based on the responses received, the agency concluded that all offerors were capable of performing and, thus, all received a low performance risk rating. Although OMV challenges the relevance of the references submitted by some offerors, we find nothing unreasonable in the Air Force's approach to investigating the past performance history of the offerors and, based on that investigation, in concluding that all offerors presented a low risk of nonperformance.

Next, OMV objects that the Air Force failed to meaningfully evaluate the offerors' price proposals for realism, reasonableness, and completeness as required by the RFP.

Where, as here, the award of a fixed-price contract is contemplated, a proposal's price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the

²(...continued)

education or a related area, and to have knowledge of word processing systems. RFP §§ C.1.4.4, C.1.4.4.1. We agree with the agency that the program assistant position at issue is not one which calls for a professional employee. The Federal Acquisition Regulation (FAR) provides that the term professional employee "embraces members of those professions having a recognized status based upon acquiring professional knowledge through prolonged study [and that] examples of these professions include accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, nursing, pharmacy, the sciences and teaching." FAR § 22.1102. Further, "[to] be a professional employee, a person must not only be a professional but must be involved essentially in discharging professional duties." Id. The program assistant position does not fall within this definition.

contractor. HSG-SKE, B-274769, B-274769.3, Jan. 6, 1997, 97-1 CPD ¶ 20 at 5. However, since the risk of poor performance when a contractor is forced to provide services at little or no profit is a legitimate concern in evaluating proposals, an agency in its discretion may, as here, provide for a price realism analysis in the solicitation of fixed-price proposals. Volmar Constr., Inc., B-272188.2, Sept. 18, 1996, 96-2 CPD ¶ 119 at 5. The FAR provides a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including a comparison of the prices received with each other, FAR § 15.404-1(b)(2)(i) (FAC 97-02); with previous contract prices for the same or similar services, FAR § 15.404-1(b)(2)(ii); and with an independent government cost estimate, FAR § 15.404-1(b)(2)(v). The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. Ameriko-OMSERV, B-252879.5, Dec. 5, 1994, 94-2 CPD ¶ 219 at 4; Ogden Gov't Servs., B-253794.2, Dec. 27, 1993, 93-2 CPD ¶ 339 at 7.

Here, the RFP stated that price proposals would be evaluated for realism, reasonableness and completeness, and provided that the evaluators would consider the reasonableness of the proposed price versus proposed staffing. RFP § M.2. The RFP further stated that there should be a clear and concise correlation between the offeror's ability to meet the requirements and the offeror's technical information to support a positive determination as to the realism, reasonableness, and completeness of the offeror's price. Id. For the price realism analysis, the RFP stated that evaluators would assess the compatibility of the proposed price with the proposal scope and efforts, the list of estimating ground rules and assumptions, and the schedule duration. To determine reasonableness, evaluators were to determine that (1) the offeror's estimates are based on factual, verifiable data and the estimating methodology employed is sound under current market conditions, (2) the estimated costs are most likely to be incurred by the offeror in the performance of the contract, and (3) the estimated total cost and profit are reasonable to the seller and reasonable to the buyer. For an offer to be determined complete, the RFP stated that the offeror must provide all the data necessary to support the offer. Id.

The record in this case shows that to assess realism, the offerors' prices were compared against the RFP requirements to ensure that all areas of the acquisition were reflected in the proposal. Agency Report, Tab 8. For completeness, each proposal was compared against the RFP to ensure compliance and the proposals were also compared against the requirements in the RFP to verify that all areas were addressed. Id. For reasonableness, offerors' assumptions, proposed profit rates, and contract summary information were evaluated. Id.

Proposed prices were reviewed by the price analyst and where it was determined that proposed compensation was unrealistic, discussions were held with those offerors. After evaluation of all final proposal submissions, the agency concluded that all offerors' proposed wages were in line with existing contracts and the

1998-99 Bureau of Labor Statistics Occupational Outlook Handbook. In sum, the agency performed a detailed price evaluation consistent with the RFP plan, as a result of which the agency concluded that PPDG's prices were reasonable.

OMV's main objection to the price realism analysis concerns the awardee's alleged failure to proposed professional compensation at the minimum acceptable level. However, as previously noted, the agency reasonably concluded otherwise, and PPDG's professional compensation is actually higher than OMV's. In sum, there is no merit to OMV's allegation that the agency failed to properly evaluate the proposal for price realism or failed to properly evaluate PPDG's employee compensation plan.

Next, OMV contends that the agency conducted prejudicially unequal discussions and engaged in improper auction techniques by providing PPDG and several other offerors with specific knowledge and direction regarding minimum acceptable salary levels in key labor categories. As noted above, discussions were held with five of the seven offerors because these offerors initially proposed base salaries for some of the labor categories that were considered to be unrealistically low. Agency Report, Tab 8. The contracting officer determined that clarifications with these offerors were necessary to ensure the offerors' complete understanding of the requirements. During discussions with these offerors, the Air Force provided specific guidance for labor categories it had determined were not realistically priced. These offerors were provided the opportunity to revise their proposals and the evaluation of the revised proposals resulted in their inclusion in the competitive range.

The statutory and regulatory requirement for discussions with all competitive range offerors, 10 U.S.C.A. § 2305(b)(4)(A)(i) (West 1998) and FAR § 15.306(d)(1), means that such discussions must be meaningful, equitable, and not misleading. I.T.S. Corp., B-280431, Sept. 29, 1998, 98-2 CPD ¶ 89 at 6. FAR § 15.306(e)(1) prohibits government personnel from engaging in conduct that favors one offeror over another. The Air Force's decision here to conduct discussions regarding compensation with those offerors that were evaluated as offering unrealistically low labor rates was not unreasonable. The agency also provided those offerors specific guidance concerning the compensation of certain labor categories, in particular, regarding the extent to which the agency believed their proposed employee compensation was inadequate relative to the current average salaries for certain labor categories, while offerors whose proposed compensation rates were considered realistic were not provided this information. Even if it was inappropriate for the agency to provide only some of the offerors with such specific details about their proposed compensation, OMV was not prejudiced by these discussions because the awardee, in its final revised proposal, proposed professional compensation levels that were higher than the current average salary standard and were higher than the protester's levels for all three professional categories. Further, while the awardee was also apprised of the agency's current

average salary standard for the program assistant position, the awardee simply elected not to increase its proposed salary for this position. Although the awardee's total price is lower than OMV's, its proposed professional compensation is higher than OMV's.

OMV also contends that had it known the government's minimum acceptable salary for each position, it could have lowered its professional compensation and would have been more competitive with the awardee. However, it is clear from the record that OMV's proposed higher total price was not due to relatively higher employee compensation but rather resulted from its higher prices elsewhere in its proposal. Accordingly, OMV was not prejudiced by the agency's compensation disclosures to PPDG during discussions. In addition, we note that the second low priced eligible offeror did not receive the benefit of such discussions and it, rather than OMV, would be next in line for award if the protest were sustained in this regard.

SARATOGA'S PROTEST

In its protest, Saratoga challenges the agency's decision to award to PPDG, alleging that the Air Force: (1) erred in concluding that PPDG's proposal represented the most advantageous proposal; (2) erred in concluding that PPDG's price proposal was realistic; and (3) erred in concluding that PPDG was entitled to a low risk evaluation based on PPDG's limited past performance.³ These objections are not for consideration on the merits.

³Saratoga also argues that the agency erred in the evaluation of its proposal in that the debriefing it received referred to the program manager it proposed for the European FAP procurement and not for the CONUS Eastern region procurement. The agency states that Saratoga's proposal was properly evaluated, and even if the evaluators did confuse the program managers, we do not see how Saratoga was prejudiced since its proposed program managers were found acceptable for both procurements and Saratoga was determined to be acceptable with a low performance risk rating under all three procurements. Additionally, Saratoga contends that the debriefing information it received was incomplete and untimely. A protester's challenge to the adequacy of a debriefing is a procedural matter concerning agency actions after award which are unrelated to the validity of the award; we generally will not review such matters. C-Cubed Corp., B-272525, Oct. 21, 1996, 96-2 CPD ¶150 at 4 n.3. The purpose of a debriefing is not to give offerors the opportunity to cure deficiencies for the instant procurement, but to furnish the basis for the selection decision and contract award. 10 U.S.C. § 2305(b)(5) (1994); Security Defense Sys. Corp., B-237826, Feb. 26, 1990, 90-1 CPD ¶ 231 at 4. Finally, Saratoga argues that the agency erred in its application of the performance/price tradeoff decision. This issue has been addressed in our disposition of OMV's protest.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-56 (1994), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (1998). Here, the record shows that all offerors were found technically acceptable with a low performance risk rating and that Saratoga submitted the fourth lowest priced proposal. If the protester is correct in that PPDG should not have been awarded the contract, there are two other offerors next in line for award. Thus, Saratoga is not an interested party to protest the award to PPDG. Watkins Sec. Agency, Inc., B-248309, Aug. 14, 1992, 92-2 CPD ¶ 108 at 4. Although Saratoga maintains that an appropriate remedy for each of its protest grounds involves a reopening of competition, in fact, these protest issues concern only the propriety of the evaluation and selection of PPDG as the awardee. Saratoga has not protested the evaluation of any of the intervening offerors' proposals.

Likewise, to the extent OMV's protest raises specific challenges to the evaluation of the awardee's proposal, OMV is not an interested party since OMV submitted the third lowest priced proposal and would not be next in line for award after PPDG. While in its comments to the agency report, filed December 11, OMV questioned the agency's evaluation of the intervening offeror's past performance, these comments were filed more than 10 days after receipt of the agency report and this issue is therefore untimely raised. 4 C.F.R. § 21.2(a)(2).

The protests are denied.

Comptroller General
of the United States.