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Decision

Matter of: Comprehensive Health Services, Inc.

File: B-285048.3; B-285048.4; B-285048.5; B-285048.6

Date: January 22, 2001

Cyrus E. Phillips, IV, Esq., for the protester.
Joseph J. Petrillo, Esq., and Karen D. Powell, Esq., Petrillo & Powell, for Hummer Whole Health Management, Inc., an intervenor.
Merilee D. Rosenberg, Esq., Department of Veterans Affairs, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency determination that protester's proposal to hire incumbent contractor's employees to perform contract presented a risk to the agency was reasonable where protester did not furnish required letters of intent from proposed personnel, and protester proposed a lower salary and fewer benefits than the incumbent employer.
 2. Best-value analysis was reasonable where agency fully considered the difference in awardee's and protester's proposed prices and determined that the additional benefits offered by the awardee were worth its higher price.
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DECISION

Comprehensive Health Services, Inc. protests the award of a contract to Hummer Whole Health Management, Inc. under Department of Veterans Affairs (VA) request for proposals (RFP) No. 101-03-00, for the operation of a comprehensive program of occupational health and wellness for VA and other specified agencies.

We deny the protest.

The RFP, for a fixed-price requirements contract, contained two statements of work (SOW). The first addressed the majority of services, including treatment of occupational and non-occupational illnesses and injuries, an employee assistance program, and other additional services. The second described the services required to run the VA fitness facility. The RFP provided that offerors who first demonstrated that they had performed similar occupational health services during the past 5 years

would be evaluated on a best-value basis under the factors past performance, oral presentation, organizational review and price. Past performance and the technical factors combined were worth significantly more than price in the award decision. With respect to price, offerors were required to propose (for a base period and each of four option periods) fully loaded hourly rates for designated labor categories, unit prices for optional medical services, and other direct costs.

Four proposals were received and, following the initial evaluation, three, including Comprehensive's and Hummer's, were placed in the competitive range for discussion purposes. Competitive Range Determination (CRD) at 6. Following discussions and the submission and evaluation of final proposal revisions, Hummer's proposal was rated blue (exceptional) for its technical/past performance proposal, and Comprehensive's was rated green (acceptable). Hummer's evaluated price (\$17,304,631.80) was the highest, and Comprehensive's (\$15,314,544.90) the second highest. Price Negotiation Memorandum (PNM) at 9. VA performed a best value determination and concluded that Hummer's superior technical proposal offered benefits to the government that were worth its additional cost. *Id.* at 10-11; Best Value Determination (BVD) at 6-7. Accordingly, award was made to Hummer.

Comprehensive challenges the evaluation and award decision on a number of grounds. We have reviewed the record and find Comprehensive's arguments to be without merit. We discuss Comprehensive's principal arguments below.

EVALUATION

Letters of Intent

The primary issue raised concerns the evaluation of Comprehensive's proposal with respect to its proposed key personnel. In this regard, the solicitation required that the medical support services be provided by key personnel or, in their absence, by backup personnel. RFP at 36; RFP amend. No. 2 at question 5. Offerors were required to identify their key and backup personnel on "Proposed Key/Backup Personnel" forms, and to provide letters of intent from those persons. RFP at 74, attach. 4. In its proposal, and during its oral presentation, Comprehensive identified 34 key personnel, all of whom currently were employees of the incumbent contractor, Hummer. Comprehensive did not provide letters of intent from these individuals, explaining instead that the incumbent personnel would not speak with Comprehensive because they feared they would lose their jobs if they did so. Comprehensive asserted that staffing would be completed during the transition phase of the contract, that all positions would be filled with qualified incumbents, and that, if there were not sufficient qualified incumbents, the positions would be filled with back-up personnel or new hires. VA ultimately concluded that, while Comprehensive's plan to hire and perform with the incumbent employees was acceptable, it posed a risk to VA because the employees had not signed letters of intent to work for Comprehensive and there was no guarantee that they would do so. CRD at 2.

Comprehensive takes issue with the agency's conclusion, arguing that its plan to hire the incumbent employees was a prudent business decision and that, because the incumbent personnel knew that Comprehensive intended to submit their names in its proposal, VA actually should have rated its plan a strength.¹

Comprehensive's argument ignores the basis for the agency's evaluation. VA did not downgrade Comprehensive's proposal merely because it proposed to perform with the incumbent staff. Rather, as explained above, it was concerned that Comprehensive would have difficulty hiring all of the employees given the absence of letters of intent. Further, during discussions, VA asked Comprehensive, among other things, to provide a breakdown of its labor rates for each labor category listed in the solicitation, Comprehensive Discussion Question No. 1, because it wanted to understand Comprehensive's fringe and benefits package. Instead of providing the requested breakdown, Comprehensive advised the agency as follows: "The labor rate for each labor category is comprised of personnel/fringe, overhead, general & administrative, and fee allocated as percentages in compliance with [Federal Acquisition Regulation (FAR)] § 42.7 Indirect Cost Rates. Included in the personnel/fringe are health, dental, vision, long/short term disability and life insurance, continuing education, all required taxes and a 401K plan. Comprehensive has also included replacement staff cost." Comprehensive's Response to Questions at 2. In the absence of the breakdown, the agency reviewed Comprehensive's overall proposed labor rates, which it found were lower than Hummer's, and noted from Comprehensive's response quoted above that it offered fewer fringe benefits to its employees than Hummer. BVD at 2. The agency concluded that these considerations exacerbated the risk that at least some of Hummer's employees would not accept employment from Comprehensive.

We find nothing unreasonable in the agency's conclusions. The purpose of this contract is to provide medical support services—a purpose that cannot be met without a qualified staff. The agency's concern that the contract be staffed from inception with qualified staff was evident from the requirement that offers include letters of intent from the key personnel proposed to perform the contract, and the qualifications of those personnel. While it is true that, even with letters of intent, employees might choose not to work for a contractor, or might leave their current employer, it was reasonable for the agency to assume that an employee who signs a letter of intent agreeing to work for a firm on a specific contract is more likely to do so, and thus represents a lesser risk to the agency, than one who declines to provide

¹ Comprehensive also asserts that evaluating its proposal to hire the incumbent staff as a weakness was improper because the solicitation permitted offerors to propose other staffing models. However, Comprehensive has not elaborated on this issue, and has not explained what other staffing model it was proposing.

a letter of intent.² Similarly, we think it was reasonable for the agency to conclude that an employee will be less likely to work for a new employer paying less and offering fewer benefits than the employee currently receives. We conclude that it was reasonable for the agency to find that Comprehensive's proposal, while acceptable, contained a weakness in that it presented a risk that Comprehensive would not be able to staff the contract.³

Additional Evaluation Issues

Comprehensive asserts that the agency unreasonably evaluated as a weakness its lack of experience working with its proposed subcontractors. Comprehensive maintains that the agency should have considered the past performance of its teaming partners. This argument confuses two different evaluation considerations and is without merit. The weakness identified concerned, not past performance, but the fact that Comprehensive has not previously worked with its subcontractors. Its subcontractors' past performance obviously has nothing to do with the agency's concerns regarding Comprehensive's working relationship with its subcontractors.

Comprehensive also argues that the agency's criticism that Comprehensive has no experience working with its proposed subcontractors demonstrates that the agency failed to recognize the validity of its teaming arrangement, in violation of FAR § 9.603. This argument also is without merit; the requirement that agencies accept the integrity and validity of teaming arrangements in general does not preclude the agency from evaluating a specific teaming arrangement for its potential impact on performance.

² Comprehensive argues that the agency improperly failed to consider Hummer's inability to fill three positions (under its current contract) from March 7 through at least September 29. While the agency did not specifically consider this, the agency was convinced that Hummer's compensation package was sufficient to attract personnel. In any case, this would appear to be a minor consideration compared to Comprehensive's failure to provide any firm staffing.

³ Comprehensive argues that VA should have advised it during discussions that it had concerns regarding whether Comprehensive would be able to employ the incumbent personnel. However, again, the record shows Comprehensive fully understood the significance of its failure to obtain the required letters of intent, as evidenced by the explanation of its failed efforts in its proposal. In these circumstances, the agency reasonably could assume that Comprehensive already was aware of this weakness, and that discussing it would serve no purpose. In light of this awareness, moreover, we fail to see how Comprehensive was prejudiced by the agency's actions.

BEST VALUE DETERMINATION

In the price negotiation memorandum, dated September 12, 2000, the contracting officer, among other things, compared the prices offered by Hummer and Comprehensive. In doing so, she determined that the difference in the offerors' total labor costs [DELETED] was essentially a premium Hummer is paying for its employees' experience, and to retain them. She also noted that there were items (totaling [DELETED] Hummer included in its proposal, and Comprehensive did not, which were beneficial because they would either provide a direct benefit to the government (e.g., subspecialty services), or benefit Hummer's employees and thus help maintain a stable workforce (professional development items). As part of her analysis, the contracting officer subtracted the cost of these extra items and the retention/experience premium from Hummer's total price (\$17,304,631.30) and arrived at a "guestimate" of [DELETED] for purposes of comparing Hummer's and Comprehensive's prices for equivalent services.

Comprehensive maintains that it was improper for the contracting officer to base the best-value determination on this "guestimate," because there is no substantiation in the record that the difference in labor rates is a retention and experience premium, and because it did not include consideration of the difference in the offerors' proposed prices for optional medical services. (Comprehensive's proposed price for optional medical services for the base year was [DELETED] lower than Hummer's).

We find nothing improper in the tradeoff. While the contracting officer did subtract certain costs from Hummer's proposal in an attempt to determine what the prices would be for identical services, this exercise did not comprise the entire tradeoff analysis. Rather, the record shows that the contracting officer was fully aware of the difference in the offerors' total evaluated prices (Comprehensive's price was \$1,990,086.90 lower), and was merely identifying the additional cost related to the beneficial items in Hummer's proposal. She ultimately based her tradeoff determination on the difference in total prices, after also concluding that the additional benefits in Hummer's proposal would provide the government with substantial benefits, and were worth the additional cost for those benefits. In this regard, the contracting officer states in her determination that her decision "is based on adequate price competition and market prices of commercial items sold to the general public. Hummer's price is less than 13% higher than the next lower proposal. Hummer provides more employee benefits and a higher salary to its employees for retention purposes. In addition, Hummer provides additional services. These additional services provide a better comprehensive health service program." PNM at 11. We find nothing unreasonable in the agency's approach or its conclusion.

As for Comprehensive's specific assertions, there was nothing improper in the agency's failure to separately consider the difference in the proposed prices for optional medical services. These were services that all offerors were required to provide, and the offerors' proposed prices for these services were included in their

total prices. Thus, this price difference was effectively accounted for in the tradeoff based on the total prices. Similarly, we see nothing objectionable in the agency's characterization of the difference in the firms' proposed labor rates as a premium for experience and retention and, in any case, fail to see how it worked to Comprehensive's detriment in the tradeoff.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel