



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Walsh Distribution, Inc.; Walsh Dohmen Southeast

File: B-281904; B-281904.2

Date: April 29, 1999

Scott M. Heimberg, Esq., Thomas P. McLish, Esq., and Andrea T. Vavonese, Esq., Akin, Gump, Strauss, Hauer & Feld, for the protesters.

Frank M. Rapoport, Esq., Charles H. Carpenter, Esq., Daniel I. Prywes, Esq., and Donald J. Carney, Esq., Pepper Hamilton, for AmeriSource Corporation, an intervenor.

Maura C. Brown, Esq., Melbourne A. Noel, Esq., Philip S. Kauffman, Esq., and Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably rated protesters' and awardee's proposals similarly under past performance factor where (1) although awardee had several minor past performance problems, they had been resolved by consolidation of firm's operations; (2) one protester, while having no negative information relating to its past performance, had never performed on a scale comparable to that required under the RFP; and (3) the second protester's proposal was rated slightly higher than the awardee's, but only due to the limited geographic area and dollar volume represented by its offer.

2. Agency's decision to make award to firm offering significant cost savings was unobjectionable where protester's and awardee's proposals were rated similarly under all non-cost criteria, and record shows agency was unwilling to pay cost premium for protester's slight advantage in past performance.

DECISION

Walsh Distribution, Inc., and Walsh Dohmen Southeast protest the award of a contract to AmeriSource Corporation under request for proposals (RFP) No. M5-Q2-99, issued by the Department of Veterans Affairs (VA) for the distribution of pharmaceuticals. The protesters maintain that the agency misevaluated proposals and improperly made award to AmeriSource.

We deny the protests.

The RFP contemplated the award of one or more fixed-price contracts to distribute the VA's pharmaceutical requirements for a base year and four 1-year options. The RFP was issued in connection with the agency's Pharmaceutical Prime Vendor (PPV) program under which the PPV delivers pharmaceutical products ordered by one of several agencies (including VA, parts of the Department of Defense, the Bureau of Prisons, the Department of Health and Human Services and the Immigration and Naturalization Service) from various Federal Supply Schedule (FSS) contracts, VA national pharmaceutical contracts, basic ordering agreements or other government contract vehicles. The contract essentially provides a means for approximately 568 medical and pharmaceutical clearinghouse facilities to have their pharmaceutical requirements delivered in a timely manner. (The agency estimates that these facilities collectively will order slightly more than \$1.5 billion in pharmaceutical products during each contract year.) Firms could submit offers for one or more regions, or for the entire national requirement. Prices were to be expressed as a percentage above or below the FSS or national contract prices.

The evaluation factors, in descending order of importance, were past performance, technical approach and price. RFP at 77. Within the technical approach area, two equally-weighted subfactors were specified, implementation plan and distribution and logistics management.¹ *Id.* The agency employed an adjectival rating system (exceptional, highly acceptable, acceptable, minimally acceptable or unacceptable) to assess proposals under the non-price factors.

The agency received 13 initial offers, 7 of which were included in the competitive range. The agency engaged in discussions with the competitive range offerors and solicited final proposal revisions (FPR). After receipt and evaluation of the FPRs, the agency made award to AmeriSource for all but 4 regions which are not at issue in this protest. Walsh Distribution's protest concerns region Nos. 6, 9, 19, 21 and 22; Walsh Dohmen's protest concerns region Nos. 3 and 18.²

¹The distribution and logistics subfactor included four subelements: next-day delivery, accuracy of prices, emergency delivery and contingency plan. RFP at 77.

²Region Nos. 18, 19, 21 and 22 were for VA consolidated mail outpatient pharmacy (CMOP) facilities. These facilities provide direct mailing of prescription drugs to eligible VA outpatients. The RFP provided that the agency could make award on an individual basis for the CMOPs, or could award all of the CMOPs to a single concern. RFP at 78. The VA elected to award all of the CMOPs to AmeriSource, whereas the protesters submitted offers for individual CMOPs.

PAST PERFORMANCE

In the past performance area AmeriSource's proposal was rated highly acceptable, Walsh Dohmen's exceptional and Walsh Distribution's highly acceptable. Walsh Distribution asserts that, since its references all provided outstanding recommendations, its proposal should have been rated exceptional. Walsh Distribution also maintains that its past performance was superior to AmeriSource's, and that this should have been reflected in a rating higher than AmeriSource's. In addition, both protesters challenge AmeriSource's highly acceptable rating. According to the protesters, AmeriSource's past performance on VA requirements show that it encountered performance difficulties, and that its proposal should have been downgraded based on these shortcomings. The protesters further note that the agency elevated AmeriSource's past performance rating from acceptable to highly acceptable between the initial and final evaluations, even though the agency did not address past performance during its discussions with AmeriSource and did not obtain any additional information after the initial evaluation.

In reviewing an agency's evaluation of proposals, our Office will not reevaluate or independently score the proposals; rather, our review is limited to considering whether the evaluation was reasonable and consistent with the solicitation's evaluation criteria. BFI Waste Sys. of Nebraska, Inc., B-278223, Jan. 8, 1998, 98-1 CPD ¶ 8 at 2.

VA's past performance evaluation was reasonable and consistent with the RFP. As for Walsh Distribution, the agency explains that it rated Walsh Distribution's past performance highly acceptable (as opposed to exceptional) primarily because, although the firm's references reported consistently good performance, those references represented a much smaller volume of business than contemplated under the solicitation for the regions for which Walsh Distribution submitted an offer. Contracting Officer's Statement at 4, 13. In this respect, the record shows that, of the nine commercial contract references provided, Walsh Distribution's largest commercial contract was for \$[deleted] in sales volume, and that the majority of the remaining contracts involved sales volume of \$[deleted] or less (four of its commercial contracts involved less than \$[deleted] in sales volume).³ Walsh Distribution Past Performance Evaluation Report. In contrast, the smallest region for

³Walsh Distribution suggests in its comments that contract size was not properly a consideration under the terms of the RFP. We disagree. The RFP specifically provided: "In addition, the offeror will be evaluated on the depth, breadth and relevance of its experience and performance under procurements of a same or similar nature to the proposed requirement." RFP at 78. We read this language as clearly permitting the agency to consider the similarity of past contracts in any relevant respects, including size and complexity of the contract.

which Walsh Distribution submitted an offer has an annual estimated sales volume of approximately \$50 million, and the cumulative estimated annual sales volume for all regions for which it proposed is \$426,253,313, or almost [deleted] times the sales volume of Walsh Distribution's largest commercial contract. Source Selection Decision attach. A. The record also shows that the agency had Walsh's references assign a numeric rating of from 1 (worst) to 5 (best) to the firm based on its past performance. All nine references assigned ratings between 4 and 5, and the average for all ratings was 4.65 points. Walsh Distribution Past Performance Evaluation Report at 6th unnumbered page. In view of relative volume of Walsh Distribution's prior commercial experience as compared to the anticipated volume under this solicitation, and the numeric ratings assigned by Walsh Distribution's references, we think the agency reasonably rated Walsh Distribution's proposal highly acceptable for past performance.

As for AmeriSource, its proposal initially was rated only acceptable for past performance, but upon review of the evaluation materials the agency concluded that the rating should be changed to highly acceptable. Contracting Officer Statement at 3. In this regard, while the record shows that, in general, AmeriSource's references noted some minor problems relating to inconsistent pricing from different distribution locations, they also stated that these problems had been cleared up when AmeriSource consolidated the number of its price loading centers from 14 to 4.⁴ AmeriSource Past Performance Evaluation Report, Cover Memorandum and at 10. The references also stated that AmeriSource consistently met a fill rate (the percentage of product supplied versus the product ordered) of approximately 98 percent (whereas the solicitation requires a fill rate of only 97 percent), Id. at 5, and noted that AmeriSource had responded adequately in all other respects, delivering products on time, responding to emergency requirements in an expeditious manner, and processing corrections to its billing and providing credits in a timely manner. AmeriSource Past Performance Evaluation Report. The record further shows that VA had a high level of confidence in AmeriSource's ability to meet the contract requirements because, as the incumbent, it provided VA with approximately 83 percent of the total dollar volume for the entire PPV program in 1998, servicing some 378 of the 568 facilities to be serviced under the current RFP. Contracting Officer Statement at 3-4. Finally, the record shows that all of the references contacted for AmeriSource assigned the firm numeric ratings between 4 and 5, with the average being 4.31. AmeriSource Past Performance Evaluation Report at 10.

The negative information contained in the record relating to AmeriSource's performance at VA facilities related almost exclusively to the pricing problems noted by the other vendors and involved only a small number of facilities. Agency Report,

⁴Prices change relatively frequently for the products being delivered and the contractor is responsible for "loading" the prices onto its central computer system.

exh. No. 40. The agency further notes that, as with AmeriSource's commercial customers, these pricing problems were largely resolved when the firm consolidated its operations. Accordingly, we conclude that AmeriSource's past performance reasonably was rated highly acceptable.

INTERESTED PARTY STATUS OF WALSH DISTRIBUTION

Walsh Distribution also argues that the agency misevaluated AmeriSource's technical proposal, improperly decided to award all of the CMOP facilities to a single vendor and made an improper cost/technical tradeoff. We find that Walsh Distribution is not an interested party for purposes of these arguments. See 4 C.F.R. § 21.0(a) (1998). As discussed, we find the agency reasonably assigned Walsh Distribution's proposal a past performance rating of highly acceptable. The record shows that the proposal of another offeror, [deleted], received technical and past performance ratings identical to Walsh Distribution's, and offered a lower price. Source Selection Decision attach. A. (Walsh does not contend that the agency misevaluated [deleted] proposal.) This being the case, even if Walsh Distribution were to prevail in these additional arguments, [deleted], not Walsh Distribution, would be in line for award in every region for which Walsh Distribution submitted an offer. See Kongdan Kumnan Restaurant/Good Food Serv., B-276846.2, Feb. 23, 1998, 98-1 CPD ¶ 57 at 5. Under these circumstances, Walsh Distribution lacks the direct economic interest necessary to maintain this aspect of its protest; accordingly, we dismiss the remainder of Walsh Distribution's protest.

TECHNICAL EVALUATION

RF Warehouse Management System

Walsh Dohmen contends that its radio frequency (RF) warehouse management system should have been rated superior to AmeriSource's because it has certain enhanced capabilities that make it both more user friendly and more efficient. The agency responds that it viewed this requirement as a matter of technical acceptability rather than as part of the relative assessment of the proposals, and that both the protester's and awardee's systems provide the capabilities required.⁵

The evaluation in this area was reasonable. While Walsh Dohmen asserts that it should have received additional credit under the subelements for the distribution and logistics management evaluation subfactor, this position is not supported by the

⁵Walsh Dohmen also maintains that AmeriSource does not have something referred to as a "split screen satellite ordering system." However, the record shows that this capability was not required for the regions for which Walsh Dohmen submitted an offer. RFP at 22. Consequently, the evaluation in this regard is irrelevant.

record. The subelements were (1) next-day delivery (described in the RFP as an assessment of the offerors' method for ensuring timely delivery of ordered pharmaceuticals); (2) accuracy of prices in automated (electronic) ordering system (described as an assessment of how the offeror will ensure that all prices in its electronic data base are correct); (3) emergency delivery procedures (described as an assessment of the offerors' procedures to ensure that emergency deliveries will be made within 12 hours); and (4) disaster recovery contingency plan (described as an assessment of how the offeror proposes to recover from possible disasters such as acts of God or computer system failure). RFP at 72. These subfactors are performance-related, and while offerors were required to have an RF system in place, the subfactors simply do not provide for an assessment of the relative merits of each offeror's RF system. Under these circumstances, and given the fact that Walsh Dohmen does not allege that AmeriSource's RF system is unacceptable for some reason, the agency reasonably determined that this was not a discriminator in the evaluation.

Computer Systems

Walsh Dohmen maintains that the agency failed to credit its proposal for offering a superior computer system (its WalshNet system), which it claims is superior to AmeriSource's system. The agency explains that it basically agrees with Walsh Dohmen, and notes that, based on this superiority, it assigned the firm's proposal a better rating than AmeriSource's under the accuracy of prices in automated (electronic) ordering systems subelement--exceptional compared to acceptable. Final Consensus Technical Proposal Rating for Walsh Dohmen at 7; Final Consensus Technical Proposal Rating for AmeriSource at 9. As with the RF system requirement, however, Walsh Dohmen insists that it should have received additional credit under the other distribution and logistics management subelements, and also under the implementation plan subfactor.

The evaluation in this area was reasonable since the pricing accuracy subelement appears to be the only evaluation area under which the superiority of a firm's computer system reasonably could be assessed. The protester does not explain, and it is not apparent from the record, how its WalshNet system enhances its capabilities under the other subelements. For example, under the emergency delivery subelement, offerors were required to outline their procedures for accomplishing deliveries within 12 hours, for example, by explaining how the offeror would traverse the distance between its facility and the receiving facility in a timely fashion (e.g., by air transportation). Clearly, the relative superiority of a firm's computer system has nothing to do with its meeting this aspect of the requirement.

Similarly, evaluation of the computer systems would not have been appropriate under the implementation plan subfactor, since under that evaluation area the agency was measuring the offerors' ability to become fully operational under the contract. Specifically, for purposes of this subfactor, offerors were required to describe how

they would install all electronic equipment, apply bar code labels to facilities, train government personnel in the use of their system, load up all pricing information, prepare their internal inventory and distribution systems and execute contract vehicles with all necessary pharmaceutical manufacturers in a timely manner. RFP at 71-72. These considerations simply do not encompass computer system capabilities.

Walsh Dohmen also suggests that the agency improperly applied the evaluation criteria inconsistently. In this regard, the protester asserts that the agency rated AmeriSource's proposal to open new distribution centers a strength, while at the same time downgrading Walsh Dohmen's proposal for offering to open a new distribution center. The record does not support this argument. Contrary to Walsh Dohmen's assertion, the evaluation record shows that, in fact, its ratings were increased based on its proposal to open a new facility. Specifically, the agency's final consensus evaluation report narrative for the implementation plan subfactor states:

Based on the plan submitted for the opening of the distribution center in Raleigh, NC, the offeror's ability to meet the requirements has been enhanced and reduces the risk to the Government of non-performance. . . . The offeror's FPR further strengthened [its] proposal, which was originally rated as acceptable [but now is rated highly acceptable].

Final Consensus Technical Proposal Rating Report for Walsh Dohmen at 4. The report shows that the agency also gave the proposal credit in several other evaluation areas for proposing to open a new warehouse. Id. at 6, 9.

COST/TECHNICAL TRADEOFF

Walsh Dohmen argues that the agency improperly made award to AmeriSource despite its proposal's relative inferiority due to its lower price. According to the protester, the agency's award decision was inconsistent with the terms of the solicitation, which required the agency to give paramount consideration to past performance and the technical evaluation criteria.⁶

⁶Walsh Dohmen also contends that the agency was required to consider the "administrative cost savings" associated with the greater efficiency of its computer system and RF warehouse management system. This argument is specious. The RFP required the agency to consider only the administrative costs associated with administering more than one contract, that is, the added costs incurred by having, for example, more than one administrative contracting officer. RFP at 79. To the extent (continued...)

Agency source selection officials are afforded broad discretion in making cost/technical tradeoffs, and our review is limited to considering whether an agency's award decision is rational and consistent with the evaluation scheme; agencies may properly select a lower-rated, lower-priced proposal where they conclude that the cost premium involved in selecting a higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. Tidewater Homes Realty, Inc., B-274689.5, Aug. 11, 1998, 98-2 CPD ¶ 40 at 4.

The tradeoff here was reasonable. The record shows that, for region 3, both the protester's and the awardee's proposals received the same highly acceptable rating under the technical evaluation factors. Source Selection Decision attach. A. In region 18, AmeriSource's proposal was rated technically superior to Walsh Dohmen's, with a rating of exceptional/highly acceptable, compared to Walsh Dohmen's highly acceptable. Id. In both regions, the protester's proposal was rated exceptional for past performance, while AmeriSource's was rated only highly acceptable. Id. The record therefore shows that, in the final analysis, the agency considered both proposals very good, with Walsh having a slightly superior score under the past performance criterion and AmeriSource having either an equal or slightly superior score under the technical evaluation criterion. At the same time, AmeriSource enjoyed a significant price advantage over Walsh Dohmen. In region 3, AmeriSource's proposal represented an estimated overall savings of \$6,368,450 over the life of the contract, and in region 18, the overall savings to the government amounted to \$3,780,000. Source Selection Decision attach. A, B. The agency ultimately reasoned that AmeriSource's lower cost offset Walsh Dohmen's superior past performance, as reflected in the source selection decision:

It was decided that the Government should not trade cost for past performance and/or technical superiority unless the cost trade off is less than \$1 million/region for a five-year period. This rationale was based on the fact that the past performance and/or technical ratings are not more than one adjectival rating apart in any instance; and in many cases, they are only one-half adjectival rating apart. Since the ratings for past performance and technical approach are close together for all offerors remaining in the competitive range, the importance of price increases. For all regions . . . it was evident . . . that the superiority of the past performance and/or technical ratings compared to AmeriSource's prices was not sufficient to warrant the cost trade off.

(continued...)

that Walsh Dohmen's systems produce a cost savings, that should have been reflected in the firm's offered price.

Source Selection Decision at 2. Aside from the fact that, as indicated above, agencies always properly may make reasonable tradeoffs between competing proposals, the RFP here expressly permitted the agency to give increased consideration to price where the proposals were closely rated. RFP at 77. Under these circumstances, the tradeoff clearly was proper.⁷

The protests are denied.

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⁷Walsh Dohmen also asserts that the agency never intended to award the CMOP regions separately, and at all times intended to award a single contract for them. The protester asserts that, as a result, it was misled into wasting its resources in preparing a proposal for region 18 when it had no chance of receiving award for that region on a stand-alone basis. This assertion is without merit, since, as discussed above, AmeriSource's proposal actually was rated technically superior to Walsh Dohmen's in region 18; thus, no matter the agency's intentions, AmeriSource was entitled to the award.