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Decision

Matter of: Hyperbaric Technologies, Inc.

File: B-293047.4

Date: March 29, 2004

Simon E. Dance, Esq., Jeffrey S. Newman, Esq., and Heather M. Trew, Esq., Foley & Lardner, for the protester.

William A. Roberts, III, Esq., Timothy W. Staley, Esq., and Jonathan L. Kang, Esq., Wiley Rein & Fielding, for PCCI, Inc., an intervenor.

Dennis M. Foley, Esq., Department of Veterans Affairs, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that agency improperly evaluated its proposal is denied where the record shows that the agency evaluated proposal in accordance with the criteria announced in the solicitation and the record reasonably supports the evaluators' judgment.

2. Protest of agency's price/technical tradeoff decision is denied where the solicitation stated that technical capability was more important than price and the source selection official reasonably found, with articulated reasons, that the awardee's technical strengths outweighed the protester's slightly lower price advantage.

DECISION

Hyperbaric Technologies, Inc. (HTI) protests the award of a contract to PCCI, Inc. under request for proposals (RFP) No. 797-FDF3-03-0002, issued by the Department of Veterans Affairs (VA) to upgrade and modernize multiplace hyperbaric chambers, related equipment and systems located at the Hyperbaric Medicine Division, United States Air Force (USAF) School of Aerospace Medicine, Brooks City-Base in Texas. HTI challenges the agency's evaluation and source selection decision.

We deny the protest.

The Hyperbaric Medicine Division at Brooks City-Base is a medical treatment facility which has two cylindrical multiplace hyperbaric chambers that can accommodate

two or more patients, medical personnel, patient attendants and/or a chamber operator. The hyperbaric chambers are pressurized and are used to treat patient wounds or infections by administering oxygen (or other gases) directly into the patient's body to aid in healing. Hearing Transcript (Tr.) at 12-16, 233-34.¹

The RFP was issued on June 20, 2003 as a commercial item acquisition and, as amended, contemplated the award of a fixed-price contract on a "best value" basis for the successful contractor to upgrade the main hyperbaric chamber (Chamber 1) and to remove, design and replace the smaller "Panama" hyperbaric chamber (Chamber 2). The statement of work (SOW) described the "minimum requirements" needed to upgrade and modernize both chambers, the associated equipment and support systems. RFP amend. 1, Questions and Answers (Q&A) No. 40 (July 15, 2003).² These upgrades include improvements to the fire suppression systems, and the chamber control systems for both hyperbaric chambers, and the installation and integration of a new state-of-the-art central control console system. RFP amend. 1, at 7. The solicitation further required that this central control console system should be a 21st century automated system with touch screen control capability and user-friendly operating system that can operate both multiplace chambers simultaneously. Id. at 8.

In response to a question posed by a potential offeror, the VA also addressed the central control console touch screen capability requirements. The Q&A was as follows:

Q: Your replies to our questions concerning an automated system were satisfactory, however, in paragraph 1.5.1 there has been added a requirement for a touch screen control for the automated system. HTI's automated FDA [United States Food

¹ Cites to the hearing transcript refer to the transcript of the hearing that our Office conducted in connection with this protest.

² The July 15 Q&A included the following exchange:

Q: Request add FAR [Federal Acquisition Regulation] clauses that invoke the Buy American Act. Give[n] the military nature of this solicitation and small industry (only [DELETED] bidders in the first solicitation) it is strongly requested to remain a USA procurement.

A: The Buy American Act will not be added to this solicitation. This is a full and open requirement giving all vendors/companies the opportunity to propose.

RFP amend. 1, Q&A No. 39 (July 15, 2003).

and Drug Administration] approved control system is operated by touching buttons versus touching a touch screen. In both cases automation is achieved by touching one button. Given our FDA automated hyperbaric control system approval, will our system be satisfactory?

A: [USAF] wants touch screen capability. However, we will evaluate all proposals and select the best one that meets our requirements.

RFP amend. 2, Q&A No. 1 (July 28, 2003). As to Chamber 2, offerors were required to design the replacement multiplace chamber with the best possible space utilization that provided a minimum of 2-gurney, or 6-ambulatory, or 4-wheelchair patient capability and with chamber door openings designed for easy gurney and wheelchair access. RFP amend. 1, at 8. The RFP also included special requirements for Chamber 2 which, among other things, identified various codes, regulations, and standards with which offerors were to comply. RFP amend. 2, at 4. One of these special requirements was as follows:

All applicable systems and installations must meet or exceed the most current National Fire Prevention Association (NFPA) Chapter 20 [codes] for Hyperbaric Facilities, and ASME [American Society of Mechanical Engineers] guidelines on Pressure Vessels for Human Occupancy (PVHO) at the time of final inspection.

Id.

The RFP provided for the evaluation of proposals on the basis of the following factors and subfactors:

1. Technical Capability
 - a. Suitability of overall upgrades/new chamber
 - b. Proposal demonstrates understanding of requirements
 - c. Overall quality and technical specifications
2. Past Performance
 - a. Experience
 - b. Reported customer satisfaction/testimonials
3. Price

RFP amend. 1, at 18. The solicitation advised that the technical capability and past performance factors, when combined, were significantly more important than price. Offerors were required to submit technical proposals which addressed how they would meet the project's objectives and contained sufficient technical data and performance specifications to support their proposed hyperbaric design solution, including their proposed equipment and components. RFP amend. 1, at 19-20. The

solicitation also advised that offerors whose offered equipment or components exceeded the solicitation requirements would “be evaluated based upon any added benefit” to the government. Id. at 19.

The agency received proposals from [DELETED] offerors, including HTI and PCCI, by the August 1, 2003 extended closing date. A four-member technical evaluation panel (TEP) from Brooks City-Base performed an initial evaluation of technical proposals using a qualitative rating system set forth in the source selection plan. Under each nonprice factor and subfactor, the evaluators assigned an excellent rating using a weighted variable of 1.0 to PCCI’s proposal and assigned a very good rating with a weighted variable of 0.8 to HTI’s proposal.³ Based on the results of the initial evaluation of proposals, the agency concluded that all [DELETED] proposals should be included in the competitive range.⁴ Agency Report (AR) exh. D, Price Negotiation Memorandum, at 6 (Sept. 19, 2003). The agency requested and received proposal revisions. The final evaluation results were as follows:

Evaluation Factors	HTI	PCCI
1. Technical Capability (65 points)		
Suitability (30 points)	[DELETED]	[DELETED]
Understanding (25 points)	[DELETED]	[DELETED]
Quality (10 points)	[DELETED]	[DELETED]
2. Past Performance (15 points)		
Experience (10 points)	[DELETED]	[DELETED]

³ As applicable here, the qualitative ratings used by the evaluators were defined as:

Excellent (1.0): Proposal demonstrates a superior understanding of requirement; response provides innovative, alternate approaches to performing the work, including thorough identification of potential problem areas and their solutions; procedures are effective and comprehensive and demonstrate quality control; proposed personnel are fully qualified; past experiences on similar projects were fully successful; virtually assures success of work.

Very Good (0.8): Proposal demonstrates a clear understanding of the requirement; response is complete and identifies some potential problems and solutions; procedures are sound and include quality control; proposed personnel are highly qualified; capable of successfully performing the work.

AR exh. D, Source Selection Plan, at 6.

⁴ [DELETED]

	Customer Satisfaction/ Testimonials (5 points)	[DELETED]	[DELETED]
	Total Score (80 maximum points)	[DELETED]	[DELETED]
	Total Price	[DELETED]	\$1,387,452

Id. at 2-3.

As indicated above, PCCI's proposal was rated higher than HTI's proposal under the technical capability factor. This was attributed to the evaluated advantages in PCCI's design approach for Chamber 2 and the state-of-the-art technology PCCI proposed for both chambers. In contrast, HTI's lower rating under this factor reflected the evaluators' judgment that HTI's design approach offered less significant strengths as compared to PCCI's design approach. In a detailed report to the contracting officer, who served as the source selection official, the TEP chair discussed the offerors' respective technical capability and past performance ratings and recommended award to PCCI.

In relevant part, the TEP found:

All vendors met SOW requirements; however, based on both the technical evaluation and past performance scores, it was determined that PCCI clearly provided the Best Value proposal when considering the needs of the [USAF] Hyperbaric Medicine Program.

The following were the factors, which gave PCCI higher technical scores over the other two vendors:

a. PCCI offered the best cutting-edge technology with their new, square chamber design. The following are some of the advantages of this concept:

- Space utilization of a square chamber is clearly an advantage, since it eliminates most of the dead space found in cylindrical type chambers. Proposals from HTI [DELETED] include cylindrical type chambers.
- Infection control and cleaning are improved, since the design eliminates floor plates, thereby preventing bacterial growth under floor plates. Additionally, it will be easier to eliminate water following fire suppression activities. Both HTI [DELETED] proposals have floor plates.
- [DELETED]

- PCCI's design reduces patient apprehension and claustrophobia, because the interior and exterior design has a natural room environmental quality compared to cylindrical chambers. Proposals from HTI [DELETED] include cylindrical type chambers.
- b. PCCI's state-of-the-art automation system is exactly what the USAF Hyperbaric Medicine Program has been searching for. [DELETED].
- c. [DELETED].

PCCI's proposal offers cutting-edge technology in the areas of chamber design, automation, communications, patient safety and infection control, which is unequaled by the other [DELETED] competitors, thereby receiving higher scores than HTI [DELETED]. The total advantage that PCCI's proposal offers, clearly exceeds the monetary difference between the vendors.

AR exh. D, Memorandum from TEP Chair to Contracting Officer, at 1-2 (Sept. 19, 2003).

The contracting officer reviewed the evaluation findings and determined that PCCI's proposal represented the best value to the government, specifically concluding that there were significant discriminators between the competing proposals. In making the award determination, the contracting officer concurred with the TEP's narrative findings concerning the offerors' respective strengths and she concluded that PCCI's technical superiority warranted the payment of the [DELETED] price premium. Award was made to PCCI on September 29. AR exh. D, Price Negotiation Memorandum, at 1-6 (Sept. 19, 2003).

Following notice of the award and a debriefing, HTI protested the propriety of the evaluation and award determination to our Office, in response to which the agency determined to take corrective action. In this regard, the agency decided to review and amend the solicitation, to request and evaluate final proposal revisions, and to make a new source selection decision. Our Office dismissed HTI's protest on November 5, based on the agency's determination to take corrective action.

On November 12, the agency issued amendment No. 3 to clarify the announced evaluation scheme because the solicitation failed to state the relative importance of the evaluation factors, as required by FAR § 15.304(d).⁵ Therefore, the agency

⁵ Under the amended evaluation scheme, price became the second most important factor but the technical capability and past performance factors, when combined, still were significantly more important than price. RFP amend. 3, at 2.

reopened the competition to permit the offerors whose proposals were included in the competitive range to submit final revised proposals. RFP amend. 3, at 2. Neither HTI nor PCCI made any technical revisions in their final proposals; however, HTI reduced its total price [DELETED]. The agency performed various reevaluation activities, including reviewing each final revised proposal and, as a result, the technical capability and past performance ratings for HTI and PCCI remained the same.

On December 8, the contracting officer again selected PCCI's proposal as representing the best value to the government. In documenting that decision, the contracting officer determined that the quality of PCCI's hyperbaric solution still outweighed the evaluated price difference between HTI and PCCI ([DELETED]). She concluded that the "impact of VA's corrective action, while bringing the procurement squarely in line with the requirements of the FAR, ultimately had no effect on VA's original source selection decision and cost/technical tradeoff." AR exh. C.2, Addendum to Price Negotiation Memorandum, at 2 (Dec. 1, 2003). Consistent with this conclusion, the contracting officer "incorporate[d] the conclusions of the technical evaluators regarding the advantages of PCCI's product," and determined that the added benefits offered by PCCI justified its slightly higher price. Id. The VA then notified HTI that it had, again, selected PCCI's proposal for award and this protest followed. After the protest was filed, the VA authorized continued performance of the contract based on the urgent and compelling needs of the government.

DISCUSSION

HTI contends that the VA improperly and unequally evaluated the offerors' proposals under the technical capability factor. HTI complains that the agency disregarded PCCI's noncompliance with the specifications and downgraded or overlooked HTI's proposal strengths. In its protest, HTI points to individual solicitation requirements, and argues that strengths were unequally assessed or makes comparisons between how various requirements were evaluated and argues unequal treatment. In so doing, HTI alleges that the evaluators inflated or otherwise impermissibly gave PCCI extra credit for industry standard capabilities, Protester's Post-Hearing Comments at 12-16, and argues that PCCI's unproven and potentially implausible rectangular chamber design should not have been considered superior to HTI's cylindrical chamber, which the protester has successfully manufactured in accordance with ASME and PVHO standards.⁶ Id. at 2; Protester's Comments at 20-21.

⁶ Although we do not here specifically address all of HTI's complaints about the evaluation of proposals, we have considered them all and find none of them has merit. This decision will address only the more significant arguments.

Where an evaluation is challenged, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Rome Research Corp., B-291162, Nov. 20, 2002, 2002 CPD ¶ 209 at 4; Lear Siegler Servs., Inc., B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 7. The fact that the protester disagrees with the agency and believes its proposal should have been rated higher than it was does not render the evaluation unreasonable. Rome Research Corp., B-291162, supra. Our review of the record, including the written proposals, the pleadings, and the testimony taken during the hearing in this matter, shows that the agency's evaluation of HTI's proposal under the technical capability factor was reasonable and consistent with the RFP evaluation criteria.

The record shows that the proposals submitted by PCCI and HTI were evaluated favorably by the VA. Specifically, the agency found that HTI's and PCCI's proposals met the minimum requirements of the solicitation and both firms demonstrated that their proposed hyperbaric chamber solutions would meet the agency's needs. AR exh. D, Memorandum from TEP Chair to Contracting Officer, at 1-2 (Sept. 19, 2003); see, e.g., Tr. 151-55, 272-74. As illustrated by the examples discussed below, the agency reasonably and even-handedly considered the offerors' particular design approach against the performance characteristics in the solicitation in assessing the strengths of each proposal under the technical capability factor.

The first example concerns the offerors' design approach for the replacement chamber. HTI proposed a cylindrical replacement chamber whereas PCCI proposed a rectangular one. As indicated previously, the VA performed a detailed comparison of the two designs, fully considering the proposed benefits of each design, including those HTI alleges are superior to PCCI's, e.g., HTI's larger chamber can accommodate more patients. AR exh. D, Memorandum from TEP Chair to Contracting Officer. The VA provided HTI credit for proposing a larger chamber than that required by the RFP; however, as specified in the RFP, the agency also considered whether HTI's cylindrical chamber offered any additional benefits to the government and noted other areas where HTI's proposed cylindrical chamber was less desirable than PCCI's. In our view, the VA reasonably concluded that "the space utilization of [the] square chamber [offered by PCCI], [DELETED] and reduction of patient apprehension and claustrophobia, improved infection control and elimination of bacteria growth" provided more desirable benefits to the government. AR exh. C.2, Addendum to Price Negotiation Memorandum, at 2. Although HTI disagrees with the agency's judgment, based on our review, we find that the agency's assessments concerning the relative benefits of a rectangular hyperbaric chamber were reasonable and we have no basis to conclude that the evaluation of HTI's and PCCI's design solutions was unfair or unreasonable.

Another example asserted by the protester of unequal evaluation pertains to the evaluation of its proposed state-of-the-art FDA-approved automation system. The

RFP, as amended by a Q&A, put offerors on notice that the touch-screen capability of the proposed central control console system would be evaluated by the agency. While the protester argues that it offered an FDA-approved automated system, the record shows that HTI proposed an automated central control console system with a touch-button, rather than a touch-screen, capability. HTI Initial Proposal, § B.6. In contrast, and as described above, PCCI's central control console system, [DELETED] was considered state-of-the-art and superior to a system with touch-button capability. As a result, the agency did not view HTI's automated system as superior to that proposed by PCCI and we have no basis to question this aspect of the evaluation.⁷ In sum, we find no evidence of unequal or unfair treatment in the record, but instead find the agency's evaluation was reasonable and consistent with the RFP's evaluation scheme.

The protester also alleges that the awardee's proposal was noncompliant with the RFP requirement that the replacement hyperbaric chamber be designed and manufactured in accordance with ASME and PVHO standards. HTI argues that PCCI's proposal does not comply with these certification requirements because neither PCCI nor its foreign-based subcontractors are ASME accredited and none possesses the PVHO certification. Protester's Comments at 18-21. On this record, we cannot say that the agency's determination that PCCI's proposal satisfied the ASME and PVHO standards was unreasonable, given the particular requirements and the RFP's evaluation scheme. First, the RFP as amended called for the replacement chamber to meet these requirements at the time of final inspection. Second, since the record shows that the replacement chamber has not been manufactured and installed, compliance with the ASME and PVHO requirements reasonably could not be determined until the time of final inspection by the agency; thus, it was not reasonable for HTI to read the RFP as requiring compliance with these requirements as part of the proposal submission. Third, PCCI did not take exception to the RFP's ASME and PVHO requirements; indeed, the record indicates that PCCI proposed a rectangular hyperbaric chamber designed by its subcontractor, [DELETED], in accordance with ASME and PVHO standards which will be manufactured by PCCI's subcontractor, [DELETED], an accredited ASME manufacturer. PCCI Initial

⁷ In this regard, HTI asserts that prior to establishing the competitive range, the contracting officer sought clarifications from PCCI regarding its proposal and argues that this communication constituted prejudicial discussions since HTI was not afforded the opportunity to address the agency's concern regarding the touch-button capability of its FDA-approved automation system. We will not consider this allegation because it was raised more than 10 days after the protester received the documents upon which it bases this protest ground and is therefore untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2003). However, we note that the agency did not have a concern regarding the acceptability of HTI's proposed touch-button approach that would require clarification or discussions. See Tr. at 297-98, 311-14, 459-60.

Proposal at 1-22. Similarly, we note that HTI's proposal offered nothing more than a commitment to design, manufacture, and install its proposed replacement chamber in accordance with these ASME and PVHO requirements. In short, we cannot conclude that PCCI's proposal was unacceptable in this regard; moreover, as the solicitation states, whether PCCI's proposed rectangular hyperbaric chamber will ultimately comply with the stated ASME and PVHO requirements would be determined at the time of final inspection.⁸

Finally, HTI challenges the price/technical tradeoff made by the contracting officer in selecting PCCI's higher-rated, higher-priced proposal for award. The protester complains that its proposal should have been selected on the basis of its lower evaluated price since, in the protester's view, the benefits offered by PCCI's proposal were not worth that proposal's higher evaluated price.

Our review of an agency's price/technical tradeoff decision is limited to a determination of whether the tradeoff was reasonable and consistent with the solicitation's evaluation criteria. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. Award may be made to a firm that submitted a higher-rated, higher-priced proposal where the decision is consistent with the evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced offer outweighs the price difference. National Toxicology Labs., Inc., B-281074.2, Jan. 11, 1999, 99-1 CPD ¶ 5 at 7.

Here, the contemporaneous record evidences a thorough evaluation and best-value analysis by the agency evaluators (who recommended award to PCCI) which provided the contracting officer with a basis upon which to weigh the relative merits of the offerors' proposals. AR exh. C.2, Addendum to Price Negotiation Memorandum, at 2. Contrary to the protester's arguments, we find that the contracting officer's decision was reasonable and consistent with the evaluation criteria. That is, the record shows that the contracting officer was well aware of the price difference between the PCCI and HTI proposals, and that PCCI's evaluated price was slightly higher than that of HTI. Nevertheless, the contracting officer found that PCCI's higher proposal rating reflected a real technical superiority that translated into added benefits to the government in terms of space utilization, patient safety, patient comfort, improved infection control, and cutting-edge technology such as its central control console automation system. Consistent with the relative importance of the evaluation criteria, under which technical capability was more

⁸ It appears that the protester is concerned that the awardee is subcontracting a significant portion of the contract work to foreign companies. As noted previously, this solicitation did not restrict the competition to domestic firms. RFP amend. 1, Q&A No. 39 (July 15, 2003).

important than price, the contracting officer found that PCCI's technical superiority was worth the additional price. Although HTI disagrees with the contracting officer's judgment, the protester has not shown it to be unreasonable.

The protest is denied.

Anthony H. Gamboa
General Counsel