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Decision

Matter of: KMR, LLC

File: B-292860

Date: December 22, 2003

Paul F. Khoury, Esq., Wiley Rein & Fielding, for the protester.
Parish K. Shah, for MindLeaf Technologies, Inc., an intervenor.
Maj. Brent Curtis, Department of the Air Force, for the agency.
Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency unreasonably rated two vendors' quotations equal under past performance evaluation factor, where record does not support agency's finding that awardee's experience was relevant to the requirements of the solicitation.

DECISION

KMR, LLC protests the award of a task order contract to MindLeaf Technologies, Inc. under request for quotations (RFQ) No. F08651-03-R-0081, issued by the Department of the Air Force for centralized appointment and referral services for military healthcare facilities at Eglin Air Force Base and Hurlburt Field, Florida. KMR, the incumbent contractor for this work, challenges the reasonableness of the agency's evaluation of past performance and "best value" determination.

We sustain the protest.

The RFQ, issued as a small business set aside, contemplated the award of a fixed-price contract to a Federal Supply Schedule (FSS) vendor in accordance with Federal Acquisition Regulation (FAR) § 8.4. The selected vendor was to operate a number of call centers and appointment desks, including the Centralized Appointment Call Center (CACC), Referral Management Center (RMC), Primary Care Manager by Name Desk (PCMBND), Tricare Plus Enrollment Center (TPEC), and several health clinic appointment desks that were to be operated like the CACC.¹

¹ These appointment desks were for the Family Health Clinic, Family Practice Clinic, Pediatric Clinic, Internal Medicine Clinic, and Flight Medicine Clinic.

To operate these centers and desks, the vendor would have to verify beneficiary eligibility, schedule appointments, and process referral requests. The vendor would also have to register patients, assign them to a primary care manager, and enroll eligible patients in the Tricare Plus program as appropriate.

The RFQ stated that award would be made to the vendor representing the “best value,” and listed past performance, mission capability, and price as evaluation factors in descending order of importance.² Mission capability was to be evaluated on a pass/fail basis whereas past performance was to be qualitatively evaluated.

Past performance was to be evaluated “[u]sing questionnaires received from the offerors’ customers, and data independently obtained from other Government and commercial sources.” The RFQ specified that the purpose of the past performance evaluation was “to allow the Government to assess the offeror’s ability to perform the effort described in this [RFQ], based on the offeror’s demonstrated present and past performance on relevant contracts.” RFQ, attach. 4, Basis for Contract Award, at 1-2. In its initial form, the RFQ defined relevant contracts to be “contracts for Central Appoint Services at Military Installation[s],” but this definition was eliminated from the RFQ by Modification 2 to the RFQ. AR, Tab 6, RFQ Modification 2. However, the RFQ stated that “[o]nly references for same or similar type contracts [were] desired,” RFQ, attach. 3, Proposal Preparation Instructions, at 2, and that “[i]n evaluating past performance, the Government reserves the right to give greater consideration to information on those contracts deemed most relevant to the effort described in this [RFQ].” RFQ, attach. 4, Basis for Contract Award, at 2. Under the RFQ evaluation scheme, “[o]fferors with no relevant past or present performance history shall receive the rating ‘neutral,’ meaning the rating is treated neither favorably nor unfavorably.” Id.

Both KMR and MindLeaf submitted responses to the RFQ and received passing ratings for mission capability. KMR’s proposed price was [REDACTED], while MindLeaf’s was \$4,418,578.92. Agency Report (AR), Tab 18, Price Checklist.

With regard to past performance, KMR identified references for its two contracts at Eglin Air Force Base and Hurlburt Field, where it performed CACC, RMC, PCMBND, TPEC, and Family Health Clinic Appointment Desk services; another contract at Tyndall Air Force Base, where it performed CACC services; and a Tricare Pacific Enrollment Processing Management and Marketing Support Project, where, as a subcontractor, KMR provided Tricare information to beneficiaries, processed referrals, and resolved claims issues. AR, Tab 11, KMR Past Performance Proposal, at 3-7. KMR’s references completed past performance questionnaires rating KMR on

² Combined, the non-price factors were “significantly more important than” price. RFQ, attach. 4, Basis for Contract Award, at 2.

a scale of one to six., with six being the best rating. Two references (for the Elgin and Tyndall Air Force Bases) gave KMR performance ratings of all sixes; the other two gave ratings of fours and fives. AR, Tab 15, KMR Past Performance Questionnaires. The Air Force averaged these scores, which resulted in an overall past performance score for KMR of 5.35, which the agency found warranted a rating of “very good.”³ The Air Force also found KMR’s past contracts to be “relevant” to the services sought in the statement of work (SOW). AR, Tab 17, KMR’s Past Performance Evaluation, at 1-4.

MindLeaf identified past performance references for a contract with the Centers for Medicare and Medicaid Services (CMS), for which MindLeaf provided “systems design and development to modernize the information systems that supports the Overpayment Tracking business processes”; and for a contract involving the Massachusetts Division of Medical Assistance, for which MindLeaf, as a subcontractor, provided “HIPAA [Health Insurance Portability and Accountability Act] Translation tool software and support services.” MindLeaf identified a third contract with a company called Macromedia, but did not identify the purpose of this contract (except to state it was not related to healthcare), although it stated that the contract included the following tasks: using e-mail; performing general word processing; operating spreadsheet programs; preparing, formatting, editing, proofreading and routing correspondence; distributing mail; and sending and receiving classified documents.⁴ AR, Tab 12, MindLeaf’s Past Performance Proposal, at 1-7. These three references provided questionnaires rating MindLeaf’s performance as fives and sixes.⁵ AR, Tab 16, MindLeaf Past Performance Questionnaires. The Air Force averaged the performance scores received, and gave MindLeaf an overall past performance score of 5.87, which also equated to a rating of “very good.” The agency concluded that MindLeaf’s past contracts were “somewhat relevant” to the SOW.⁶ AR, Tab 17, KMR’s Past Performance Evaluation, at 2, 4.

³ The Air Force initially erred in calculating KMR’s score to be 5.05, but corrected this error before award was made. AR, Tab 17, Memorandum for Record, Sept. 12, 2003.

⁴ Mindleaf’s quotation also indicated that these tasks were performed under its two other referenced contracts.

⁵ MindLeaf’s quotation identified two other contracts assertedly relevant to the SOW. On one of these contracts, MindLeaf, as a subcontractor, implemented HIPAA compliance rules; and on the other, it developed and hosted a web-based logistics collection and reporting system. These references did not provide questionnaires and were not considered by the Air Force in the past performance evaluation.

⁶ Under the mission capability factor, however, the Air Force noted that MindLeaf’s quotation “does not indicate any past appointment or referral management experience.” AR, Tab 14, Mission Capability Evaluation Worksheet, at 2.

Although the source selection decision concluded that MindLeaf's referenced contracts were "somewhat relevant," it did not state why this was the case. Instead, the contracting officer concluded:

After reviewing the information provided on [MindLeaf's] website, it is clear that MindLeaf has experience with IT [information technology] and healthcare. In addition, the type of work they have performed in the past is extremely technical in nature and they managed them well. I find nothing complex about the work included in the SOW and nothing which would preclude MindLeaf from performing the duties.

AR, Tab 18, Memorandum for Record, August 27, 2003, ¶ 1. In comparing the vendors' quotations, the Air Force found that although KMR's past performance was more relevant than MindLeaf's, it was "not as good," given KMR's lower overall past performance score. AR, Tab 18, Memorandum for Record, Aug. 27, 2003, ¶ 2. Thus, the two vendors' quotations were found to be "roughly equivalent" in terms of past performance. Contracting Officer's Statement ¶ 4. Since the vendors' quotations were also rated equally for the mission capability factor and MindLeaf quoted a lower price, the Air Force selected MindLeaf's quotation for award.

KMR protests the agency's past performance evaluation and award decision, contending that MindLeaf's past performance was not relevant to the SOW and therefore cannot reasonably be found to be "roughly equivalent" to that of KMR, who, in contrast, has directly relevant experience performing the central appointment services sought under the RFQ. The Air Force argues that prior experience with central appointment services was deleted from the RFQ as the definition of relevant contracts and thus such experience was not required, and that the agency reasonably exercised its discretion in determining that Mindleaf's references were somewhat relevant.

As noted above, the evaluation was conducted under the FSS program. Under this program, an agency is not required to conduct a competition before using its business judgment in determining whether ordering supplies or services from an FSS vendor represents the best value and meets the agency's needs at the lowest overall cost. FAR § 8.404; OSI Collection Servs., Inc., B-286597, B-286597.2, Jan. 17, 2001, 2001 CPD ¶ 18 at 6. However, where an agency decides to conduct a formal competition for award of a task order contract, as is the case here, we will review the agency's actions to ensure that the evaluation was fair and reasonable and consistent with the solicitation. COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5. With regard to past performance evaluations conducted under the FSS program, we recognize that those evaluations, including the agency's determinations of the relevance and scope of the vendors' performance history to be considered, are a matter of agency discretion; we will not substitute our judgment for the agency's reasonable past performance conclusions, and we will question

those conclusions only where they are not reasonably based or are undocumented. Power Connector, Inc., B-286875, B-286875.2, Feb. 14, 2001, 2001 CPD ¶ 39 at 3; OSI Collection Servs., Inc., *supra*, at 6.

As noted above, the RFQ indicated that the Air Force considered relevant only contracts involving the “same or similar” services for purposes of evaluating past performance. Here, giving due deference to the agency’s broad discretion in determining whether a contract is relevant, the agency has not rationally explained, nor does the record indicate, how MindLeaf’s referenced contracts are relevant—that is, are the “same or similar”—to the effort described in the RFQ. Specifically, although the Air Force states that MindLeaf “has experience with IT and healthcare,” it does not explain, and the record does not support, how any of MindLeaf’s past contracts relating to IT or healthcare are similar to the RFQ requirements, which entail operating call centers and appointment desks. As the agency concedes, MindLeaf’s past performance did not include any experience relating to CACC, RMC, appointment desk services, or any other specific services required by the SOW. Instead, the record confirms that MindLeaf’s experience relates only to computer-based systems design, development, and related support, and to the extent that MindLeaf identifies any experience in its quotation related to healthcare, that experience involves software design for implementing HIPAA compliance regulations and supporting an overpayment tracking system, which do not appear to be related to any requirement of the SOW here.⁷ Although the agency now explains that it determined MindLeaf’s experience to be somewhat relevant “[s]ince most of the work included in the [SOW] was done utilizing computers and program management,” Contracting Officer’s Statement, ¶ 3, the SOW does not identify computer and program management skills as part of the effort required, but rather emphasizes staff involvement in answering incoming telephone calls and performing appointment scheduling, referral processing, and related services on medical matters, areas in which MindLeaf apparently has no experience.⁸

⁷ In MindLeaf’s comments submitted in response to the protest, the firm adds that its healthcare experience “ranges from complex HIPAA projects to providing staffing resources (in Information Technology to Administrative positions)” and includes performing “Healthcare Studies, Claims, Medicare, Medicaid, HIPAA, Overpayment, software development, [and] Medical–Administrative services” under “various IT, Administrative, and related contracts.” MindLeaf Comments, Sept. 24, 2003, at 2. However, MindLeaf’s website indicates that this experience is limited to systems development of a claims reporting system and IT solutions for HIPAA compliance. MindLeaf does not claim to have any experience involving direct patient contact, operating call centers or appointment desks, or providing scheduling and referral services, the services required by the RFQ, nor does it explain how its experience is relevant to the RFQ requirements.

⁸ Furthermore, the RFQ provides that “the government will furnish all necessary equipment to support the functions described in this contract,” including “access to
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The essence of the Air Force's argument as to why MindLeaf's experience is relevant is that if MindLeaf has the corporate management expertise and commitment to successfully perform the far more complex services involving IT and/or healthcare that were involved in its referenced contracts, it should be able to successfully perform the far less complex services involved here, even though it has no experience in performing anything like these type of services.⁹ We question the reasonableness of this analysis: a firm's success in performing complex IT tasks does not necessarily indicate that it can successfully perform the contract here involving significantly different tasks and skills, even if they involve less sophisticated skills. More importantly, though, by adopting this approach, the Air Force abandoned the RFQ's definition of "relevant" as indicating the same or similar work.

In sum, the agency has not reasonably explained why MindLeaf's experience is relevant. If MindLeaf has no relevant experience, it deserved a neutral past performance rating under this RFQ evaluation scheme, which would be inferior to KMR's very good past performance rating, thus requiring a cost/technical tradeoff analysis that was not needed previously.

We sustain the protest.

We recommend that the agency reevaluate vendors under the past performance evaluation factor and determine and document whether the quotations should, in fact, be equally rated, or whether KMR's past performance is actually superior, as the record suggests.¹⁰ We further recommend that the agency perform a new best value determination. Additionally, we recommend that the protester be reimbursed its cost of filing and pursuing the protest, including reasonable attorneys' fees. Bid

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all required automated systems," RFQ § 3.1, further suggesting that MindLeaf's systems development experience may be irrelevant.

⁹ Further calling into question the reasonableness of the agency's assessment is the fact that the dollar values of the referenced contracts performed by MindLeaf are significantly smaller than the estimated value of the task order issued here, and lower than the value of most of the past contracts performed by KMR.

¹⁰ Our review of the record also suggests that MindLeaf's quotation may not have met all of the requirements for the mission capability factor and may not have been deserving of an equal rating for this factor. See AR, Tab 14, MindLeaf Mission Capability Checklist, at 2. The agency may wish to reevaluate quotations under this factor as well.

Protest Regulations, 4 C.F.R. § 21.8(d) (2003). The protester should submit its certified claim for costs to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel