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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: The OMO Group, Inc.

File: B-294328

Date: October 19, 2004

Garreth E. Shaw, Esq., The Shaw Law Firm, for the protester.
Susan L. Schor, Esq., McManus, Schor, Asmar & Darden, for RehabPlus Group, Inc.,
an intervenor.

Clarence D. Long III, Esq., Department of the Air Force, for the agency.
Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation required the submission of an “average vacancy fill rate” in order to evaluate a firm’s ability to address personnel turnover in a timely manner, the agency reasonably calculated the awardee’s rate using reported vacancies for positions that were identified as vacant for zero calendar days based on its conclusion that a vacancy of zero days represented situations where a position was immediately filled, thus demonstrating good planning and management by the awardee.
2. Contracting agency reasonably concluded that awardee’s program manager had the solicitation’s desired experience, despite the fact that the awardee’s proposal indicated that its program manager only partially met the desired experience criterion, where the record shows that the evaluators were familiar with the nature of the positions held by the proposed program manager; the program manager’s experience was well known within the Department of Defense; two other offerors proposed the same program manager as having the desired experience; and the program manager’s declaration supported the agency’s conclusions about his experience.
3. Challenge to awardee’s past performance rating of “confidence” is denied where the record shows that the rating was reasonable despite a single negative past

performance questionnaire, which the agency considered in conjunction with the awardee's response to the concerns raised.

DECISION

The OMO Group, Inc. protests the award of a contract to RehabPlus Group, Inc. under request for proposals (RFP) No. FA8901-04-R-0007, issued by the Department of the Air Force for Family Advocacy Program (FAP) services. OMO challenges the Air Force's evaluation and award determination.

We deny the protest.

The RFP was issued as a competitive section 8(a) set-aside for personal services to supplement FAP staff at Air Force medical treatment facilities in the western continental United States. The FAP's mission is to prevent and treat child and spousal abuse utilizing qualified, master's-level clinical social workers, U.S.-licensed registered nurses, and other FAP staff personnel. The RFP contemplated the award of a time-and-materials contract for a base year with four 1-year options to the firm submitting the proposal evaluated to represent the "best value."

Proposals were to be evaluated under four factors: mission capability, proposal risk, past performance, and price. When combined, the non-price factors were significantly more important than price. Mission capability and proposal risk were further divided into the following subfactors (in descending order of importance): corporate experience, management, and recruitment/retention plan. Proposals received one of four color ratings for each subfactor under the mission capability factor: blue (exceptional), green (acceptable), yellow (marginal), and red (unacceptable). Under the proposal risk factor they were scored as high, moderate, or low risk. Past performance was rated based on relevance (very relevant, relevant, somewhat relevant, or not relevant) and confidence (high confidence, significant confidence, confidence, neutral/unknown confidence, little confidence, or no confidence). Under the terms of the RFP, past performance of subcontractors proposed to perform at least 25 percent of the proposed effort was considered in addition to the prime contractor's past performance. RFP § M002(e).

For the purpose of evaluating corporate experience, the RFP (as amended) required offerors to submit a list of contracts; for each contract offerors were to provide an "average vacancy fill rate," which was defined as "the average number of days direct health care positions were vacant during the contract period of performance for each contract." RFP § L 3.1. With regard to calculating the average vacancy fill rate, the RFP explained that "only those positions that were actually vacant will be used when computing the average vacancy fill rate." RFP § L 3.1. Offerors were required to format their information in the same manner as in the following example, which was provided in the solicitation:

<u>Contract</u>	<u>Position Title</u>	<u>No. of Times Vacant</u>	<u>Calendar Days Vacant</u>	<u>Average Days Vacant</u>
#1	Nurse	2 times	20 days/30 days = 50 days	25 days
	Dentist	0 times	-	
	Social Worker	3 times	10 days/20 days/30 days = 60 days	20 days

Average vacancy fill rate for contract #1 = 110 days/5 = 22 days

<u>Contract</u>	<u>Position Title</u>	<u>No. of Times Vacant</u>	<u>Calendar Days Vacant</u>	<u>Average Days Vacant</u>
#2	Social Worker	1 time	10 days	10 days

Average vacancy fill rate for contract #2 = 10 days/1 = 10 days

In order to meet the corporate experience requirement, the RFP (as amended) required offerors to meet the following minimum average vacancy fill rates for all contracts provided within the last 4 years: (1) 30 days for contracts with a period of performance less than 1 year, (2) 60 days for contracts greater than 1 year but less than 2 years, and (3) 90 days for contracts with a period of performance greater than 2 years but less than 4 years. RFP § M002(c)(1)(b). Prior to the amendment, the RFP simply required an average vacancy fill rate of less than 90 days for all contracts within the last 4 years.

With regard to the “management” subfactor, the RFP instructed offerors to submit for their program manager—one of the key personnel required by the RFP—a resume with dates of employment, places of employment, and job descriptions. For the purpose of evaluating this subfactor, the RFP stated as follows:

the minimum experience requirement for the Program Manager is two (2) years within the last four years managing a multidisciplinary staff that was providing direct health care. Two (2) years experience within the last four years managing Military FAP staff, including processing and managing the credentialing requirements of employees, is desirable.

RFP § M002(c)(2).

Under the “recruitment/retention plan” subfactor, offerors were required to provide detailed information concerning their methods for recruiting and retaining the number of personnel with the qualifications required under the RFP. Proposals were to be evaluated based on the offeror’s ability to recruit and retain qualified

employees within the time constraints of the solicitation, the offeror’s network capability to recruit qualified personnel, the offeror’s plan for ensuring accuracy of personnel qualifications, the offeror’s plan for processing and managing of credentialing requirements, and its plan for retaining qualified personnel to ensure uninterrupted service to patients.

Nine firms, including OMO and RehabPlus, submitted proposals. After review of the proposals, the agency decided to make award based on initial proposals without discussions. The final evaluations for OMO and RehabPlus were as follows:

	OMO	RehabPlus
Mission Capability/Proposal Risk		
- Corporate Experience/Risk	Green/Low	Blue/Low
- Management Plan/Risk	Blue/Low	Blue/Low
- Recruitment/Retention Plan/Risk	Green/Low	Green/Low
Past Performance	Confidence	Confidence
Evaluated Price	\$12,058,919.67	\$12,577,386.80

The source selection authority reviewed the offerors’ proposal ratings and prices and based on this review determined that the higher technically rated proposal submitted by RehabPlus was the best value and that it was worth the 4.12 percent higher price when compared to OMO’s lower rated, lower priced proposal. After receiving notice of the award and a debriefing, OMO filed this protest.

In its protest, OMO principally argues that the awardee’s proposal should have been found unacceptable because it did not meet the “average vacancy fill rate” requirements of the solicitation; the Air Force unreasonably evaluated the awardee’s proposed program manager under the management subfactor; and the agency improperly evaluated the awardee’s past performance.¹

¹ In its comments on the agency report, the protester also challenged, for the first time, the agency’s evaluation of the awardee’s retention/recruitment plan by citing to information about the awardee’s subcontractor’s history of providing timely staffing on prior contracts. However, because this subfactor did not concern an offeror’s performance on prior contracts but rather provided for the evaluation of an offeror’s plan and network of staff for the recruitment and retention of qualified personnel for the subject requirements, the protester’s arguments in this regard are misplaced and without merit.

OMO also argued that the agency improperly evaluated proposals because the Air Force wanted to hire the program manager proposed by OMO for a different project and that the agency should have rated its “average vacancy fill rate” as a strength. Because the protester failed to address these issue in its various submissions filed subsequent to the agency’s detailed responses addressing these allegations, we deem
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In reviewing protests against an allegedly improper evaluation and award, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable, and in accord with the RFP's terms and applicable procurement statutes and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD P 134 at 7. Our review of the record here provides no basis to question the reasonableness of the agency's evaluation of the awardee's proposal or the award decision.

EVALUATION OF "AVERAGE VACANCY FILL RATE"

In challenging the agency's evaluation of the awardee's corporate experience, OMO principally contends that RehabPlus did not meet the minimum average vacancy fill rate requirements of the solicitation. Specifically, OMO disputes the agency's interpretation of the term "vacancy" and how it calculated the awardee's average vacancy fill rate as a result of the allegedly flawed interpretation. According to OMO, when the term "vacancy" is given its proper meaning under the solicitation, the average vacancy fill rate for RehabPlus fails to meet the requirements of the solicitation.²

The parties do not dispute the fact that the RehabPlus submitted all of the information in the chart format required by the solicitation, including, as identified for each contract: the positions under the contract, the number of times each position was vacant, the number of calendar days the position was vacant, and the average number of days that the position was vacant. The heart of OMO's complaint concerns the fact that several of the positions listed in the awardee's average vacancy fill rate chart were listed as being vacant one time, yet for zero calendar days. According to OMO, a vacancy for zero calendar days does not qualify as a "vacancy" and should not have been used when calculating the awardee's average vacancy fill rate since the express terms of the solicitation stated that "only those

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the issues abandoned. Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8.

² OMO also argues that the agency did not apply the average vacancy fill rate requirements set forth in the amended version of the RFP, but rather applied the pre-amendment requirements. The agency specifically refutes this allegation. Even assuming that the protester is correct, however, the awardee met the minimum requirements as amended, as discussed below, thus there is no prejudice associated with the alleged error.

positions that were actually vacant will be used when computing the average vacancy fill rate.” RFP § L 3.1.

OMO’s concern bears only on the acceptability of the awardee’s proposal with regard to the average vacancy fill rate for contracts less than 1 year in duration. Under OMO’s interpretation, the awardee’s average vacancy fill rate for contracts with a period of performance of less than 1 year would be computed as 31.76 days, exceeding the 30-day maximum average vacancy fill rate permitted. Under the agency’s interpretation, a position identified as being vacant one time, yet for zero calendar days, constitutes a “vacancy” for the purpose of calculating the average vacancy fill rate, so that the awardee’s average vacancy fill rate for contracts less than 1 year in duration is 29.5 days, within the 30-day limit.³ Based upon our review of the record, the agency’s calculation of the awardee’s average vacancy fill rate was reasonable and consistent with the terms of the solicitation.

As an initial matter, while the solicitation does not define the term “vacancy,” the fundamental purpose of calculating the average vacancy fill rate was to evaluate an offeror’s ability to address personnel turnover in a timely manner. This was an obvious concern of the agency given that the solicitation was for the provision of professional staffing services throughout the contract period. With this purpose in mind, the agency maintains that when it calculated the average vacancy fill rate, it included positions that were identified as being vacant even where the period of the vacancy was listed as “zero,” because they represented situations where a position was immediately filled, thus, in the agency’s estimation, demonstrating good planning and management on the contractor’s part.

In defense of its position, the protester attempts to paint the agency and the awardee as inconsistent in their discussion of what it meant to have a vacancy for zero calendar days. The protester notes that the agency interpreted a zero calendar day vacancy to mean that the position experienced a gap or lapse for some theoretical period of time, which was less than 1 calendar day, while RehabPlus, on the other hand, explained in its comments that when it reported a zero calendar day vacancy there was no gap or lapse in service despite a change in personnel. OMO’s strained effort to establish an inconsistency is unpersuasive. While the agency couched its comments in terms of the change in the position, and RehabPlus couched its comments in terms of performance of the required service, it is apparent that there was no meaningful difference between their positions. Both viewed the zero

³ The difference in the calculations results from the fact that the average vacancy fill rate under the solicitation equals the number of calendar days a position is vacant (the numerator) divided by the number of vacancies (the denominator). By including in this formula a position that was vacant for zero days, the overall average necessarily decreases since the numerator remains constant while the denominator increases by one.

calendar day vacancy as accounting for a situation where RehabPlus immediately replaced one employee that was leaving with another. More important, however, is the fact that the protester's view, which excludes a zero calendar day vacancy from the average vacancy fill rate calculation, would fail to credit RehabPlus with taking action to immediately fill a position--an action that was clearly desirable given the solicitation's requirements and the evaluation scheme adopted by the agency. As a consequence, we conclude that the agency's interpretation and actions in this regard were reasonable and consistent with the solicitation.

EVALUATION OF PROGRAM MANAGER'S EXPERIENCE

OMO argues that the Air Force improperly evaluated RehabPlus under the management subfactor. In evaluating this subfactor, the Air Force concluded that the proposal submitted by RehabPlus had a strength because the program manager proposed by RehabPlus met not only the minimum level of experience, but also the desired experience identified in the RFP, specifically, 2 years experience managing military FAP staff within the last 4 years, including processing and managing the credentialing requirements of employees. In support of its argument, OMO alleges that the proposed program manager had at most 1 year of experience managing military FAP staff within the last 4 years, including processing and managing the credentialing requirements of employees. OMO alleges that the program manager's resume failed to establish the fact that he had the desired experience. In addition, OMO highlights the fact that the proposal submitted by RehabPlus states that its program manager only "partially meets" the desired management criteria with 1 year of the desired experience within the past 4 years. Awardee's Proposal at 3, 11, 22 and 23.

The Air Force maintains that its evaluation of the program manager's experience was proper. According to the program manager's resume, prior to his retirement from the Navy as a Captain, he had served as the Executive Officer for a Naval Medical Clinic from June 2001 through May 2004 and as a Navy Family Advocacy Coordinator from March 1999 to June 2001. In evaluating the program manager's experience, the agency indicates that, despite the statements in the awardee's proposal, its technical evaluators were familiar with the positions held by FAP personnel among the different services and were aware that by virtue of his Executive Officer position the program manager proposed by RehabPlus had the desired experience. In addition, the agency notes that the proposed program manager's experience was well known throughout the Navy and the Department of Defense. The agency also highlights the fact that two other offerors proposed the same program manager and demonstrated that he met the desired experience under the management subfactor. As a final matter, the proposed program manager submitted a declaration in response to the protest, which details his experience and establishes that he met the desired experience for the management subfactor. Based on this record, we conclude that the agency's evaluation of the awardee's program manager was reasonable.

EVALUATION OF PAST PERFORMANCE

OMO asserts that the agency failed to properly consider negative past performance information contained in a past performance questionnaire submitted for the awardee's subcontractor and that the agency should have given RehabPlus a rating of either "little confidence" or "no confidence" rather than the rating of "confidence." OMO's contentions are without merit. In this regard, the agency considered a total of six contracts and their corresponding questionnaires (three for RehabPlus and three for its subcontractor). All of the awardee's contracts were rated as "somewhat relevant" and the questionnaires reflected overall performance ratings of exceptional, very good, and satisfactory. Of the subcontractor's three contracts, two were considered highly relevant and one was considered relevant. The questionnaire for the relevant contract reflected an overall performance rating of exceptional, while performance for one of the highly relevant contracts was rated very good.

In support of its argument, OMO focuses exclusively on the performance questionnaire for the other highly relevant contract, which rated the subcontractor's overall performance between satisfactory and marginal and rated the subcontractor unsatisfactory in response to a question regarding how well the firm filled vacancies. In the face of this negative information, the Air Force allowed RehabPlus to respond to the concerns raised by the questionnaire. Based upon a detailed response submitted by the subcontractor, the agency determined that the issues raised by the questionnaire could be resolved with government oversight and direct communication with RehabPlus. Thus, when it considered all the past performance information for RehabPlus and its subcontractor, the Air Force assigned RehabPlus a rating of "confidence" for past performance. While OMO maintains that this rating was unjustified given the negative information contained in the questionnaire, its concern amounts to little more than mere disagreement with the agency's decision and does not render the rating unreasonable.⁴ UNICCO Gov't Servs., Inc., supra.

As a final matter, OMO argues that the agency failed to reasonably address other information contained in the one negative questionnaire for the awardee's subcontractor. Specifically, the questionnaire asked, "Are you aware of any other contracted efforts performed by this contractor similar in nature to this contract? Please identify contract/program and point of contact." In response, the individual who prepared the questionnaire stated, "It is my understanding the Army cancelled

⁴ OMO also argues that the agency failed to provide this negative information to the source selection authority for its consideration. The agency maintains that it acted properly by providing the source selection authority with the evaluators' final integrated analysis of the awardee's past performance and rating of "confidence." OMO does not point to any violation of law or regulation or demonstrate how the agency's actions were contrary to the solicitation. Thus, we conclude that there was nothing improper with the agency's actions in this regard.

their contract with [the subcontractor] for poor performance.” AR, Tab 15, unnumbered page 51. According to OMO, the agency failed to act reasonably because it did not contact the individual who answered the questionnaire to obtain more information about the alleged cancellation.

The Air Force states that it contacted an individual with Army Family Programs, who advised that she was unaware of any cancellation, and also called an employee with the “Defense Contracts office,” but the call was not returned. Agency Response to the Protester’s Comments, August 30, 2004, at 6. The agency maintains that it did not seek further information from the individual who prepared the questionnaire, since that person worked for the Marine Corps, not the Army, and her answer in the questionnaire was vague and reflected the fact that she did not have direct knowledge of the circumstances of the situation. Based on these facts, we conclude that the Air Force acted with reasonable diligence when inquiring about the alleged cancellation for poor performance.

The protest is denied.

Anthony H. Gamboa
General Counsel