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Decision

Matter of: WJM Professional Services, LLC

File: B-422328.2

Date: May 28, 2024

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DIGEST

1. Protest that the solicitation's price evaluation methodology unreasonably failed to consider the relative costs of proposals is denied where the methodology incorporated a "notional estimate" from which the agency will be able to compare the relative costs of proposals.
 2. Protest challenging terms of price reasonableness determination is denied where the elements of the determination are consistent with standard practice.
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DECISION

WJM Professional Services, LLC (WJM), of Rockville, Maryland, protests the terms of request for proposals (RFP) No. 70Z02322R11120001, issued by the Department of Homeland Security, United States Coast Guard, for multi-discipline healthcare services. WJM complains that the RFP's price evaluation methodology is unreasonable.

We deny the protest.

BACKGROUND

On September 8, 2022, the Coast Guard issued the RFP to procure multi-discipline healthcare services to be performed at various clinics throughout the United States.

Agency Report (AR), Tab A-1, Conformed RFP at 3.¹ The clinics are divided into three regions, and offerors can submit proposals to provide services within any or all. *Id.* at 3, 67.

The RFP advises that the procurement will be conducted using the procedures set forth in Federal Acquisition Regulation (FAR) part 12, Acquisition of Commercial Products and Commercial Services, and part 15, Contracting by Negotiation. RFP at 3, 69. The agency will award up to three 60-month indefinite-delivery, indefinite-quantity (IDIQ) contracts (*i.e.*, one contract for each region) with fixed-price orders to be placed against those contracts. *Id.* Award will be made on a best-value tradeoff basis considering technical plan, past performance, and price factors. *Id.* at 68-69. When combined, the technical plan and past performance factors are equal to the price factor. *Id.* at 68.

Regarding price, the RFP instructs offerors to complete a pricing schedule. RFP at 67. Offerors are instructed to provide their burdened labor rates for each labor category. *Id.* The pricing schedule provides estimated labor hours for some categories, while not providing any estimated labor hours for most. AR, Tab A-2.b, RFP, amend. 12, attach. 1, Pricing Schedule. For example, at the Baltimore, Maryland clinic, the “Dental Hygienist” has 1,672 hours, while the “General Dentist” has 0 hours. *Id.* Other examples are the Philadelphia (Delaware Bay), Pennsylvania and Barbers Point, Hawaii clinics, where both clinics have 23 labor categories, and all have 0 estimated labor hours. *Id.*

When evaluating price, the RFP advises that the agency will calculate a total evaluated price (TEP) using the labor categories for which the solicitation provides estimated hours (*i.e.*, the estimated labor categories). RFP at 70. Indeed, the RFP advises “[t]he TEP will be the sum of the proposed burden rates times the hours provided by the Government[.]” *Id.* The agency will consider the TEP for fair and reasonable pricing and will then use the TEP as part of the best-value tradeoff analysis. *Id.* at 68, 70.

The agency will also evaluate the proposed pricing for the labor categories with zero estimated labor hours (*i.e.*, the zero-hour labor categories). RFP at 71. The government will analyze the zero-hour labor categories for fair and reasonable pricing by comparing offerors’ proposed rates against each other for each labor category. *Id.* (“Individual burdened rates will be evaluated to determine if fair and reasonable in accordance with FAR 15.404-1. It is the Government’s intent to rely on adequate price competition and a comparison of offeror’s prices to determine fair and reasonable pricing.”). The agency will not consider the proposed pricing for the zero-hour labor categories as part of the best-value tradeoff analysis. *Id.* at 68.

Prior to the February 28, 2024, close of the solicitation period, WJM filed this protest with our Office.

¹ References to page numbers in this decision are to the Adobe PDF pages provided in the agency report.

DISCUSSION

WJM raises two challenges to the RFP's price evaluation methodology. Protest at 7. First, WJM argues that the RFP's failure to provide labor-hour estimates for most labor categories prevents the agency from reasonably evaluating the relative costs of proposals. *Id.* at 8. Second, WJM argues that the RFP unreasonably fails to evaluate all labor categories equally. *Id.* at 10-11. We discuss the allegations in turn.

Evaluation of the Relative Costs of Proposals

WJM contends that the RFP unreasonably fails to provide labor-hour estimates for most labor categories. Protest at 7. WJM explains that 850 out of 1,020 labor categories have zero estimated hours. *Id.* at 9. Because labor rates for most labor categories will therefore not be included in the TEP, WJM asserts that the agency will not be able to compare proposals meaningfully to discern which offeror's proposal contains the most advantageous pricing. *Id.* at 9-10; see also Comments at 5-6.

In response, the Coast Guard explains that it included estimated hours for the labor categories for which it currently has an immediate need, and that it did not provide estimated hours for the labor categories for which it anticipates a need but cannot presently predict the number of hours required. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 7. The Coast Guard argues that it reasonably elected not to consider the zero-hour labor categories as part of the TEP because the existing price evaluation methodology will identify which proposal has the most advantageous pricing for known needs. Agency Resp. to GAO Req. for Information at 3. Further, the Coast Guard argues that "[t]he TEP represents the Government's current needs and will be the basis of the first Task Order and subsequent task orders throughout the life of the IDIQ." *Id.* at 2-3.

Agencies are required to consider cost or price to the government in evaluating competitive proposals. 41 U.S.C. § 3306(c)(1)(B); see also 41 U.S.C. § 3307(a)(1) (unless otherwise provided, procurement statutes apply to commercial products and services); accord *Qwest Gov't Servs., Inc. d/b/a CenturyLink QGS*, B-407835, Mar. 7, 2013, 2013 CPD ¶ 79 at 9. While it is up to the agency to decide upon some appropriate, reasonable method for proposal evaluation, the method chosen must include some reasonable basis for evaluating or comparing the relative prices of proposals, so as to establish whether one proposal would be more or less costly than another. *Qwest Gov't Servs., Inc. d/b/a Century Link QGS, supra*. Where an agency cannot estimate its need with reasonable accuracy, we have said that an agency may use a notional estimate or hypothetical example, consistent with the RFP's requirements, to provide a common basis for comparing the relative costs of the proposals. See *Aalco Forwarding, Inc., et al.*, B-277241.15, Mar. 11, 1998, 98-1 CPD ¶ 87 at 11.

On this record, we do not object to the RFP's price evaluation methodology because, even though the TEP omits most labor categories, we view it as constituting a "notional

estimate.” A “notional estimate” is a representative projection of the services to be procured. See *Qwest Gov’t Servs., Inc. d/b/a Century Link QGS, supra; accord Office Depot, LLC*, B-420482, May 3, 2022, 2022 CPD ¶ 111 at 9-10.

Here, the TEP constitutes a “notional estimate” because the estimated labor categories incorporate the services that will most likely be ordered as they reflect the government’s current and historic needs.² Indeed, the Coast Guard explains that the estimated labor categories will form the basis of any task order issued, and that it expects that the estimated labor categories will form approximately 80 percent of the contract value. See *id.* at 3 (“The agency incorporated an additional 20 [percent] above the current level of effort to create the ceiling price which will be established in a resulting contract.”). Further, the Coast Guard explains that “[c]onsideration of only the TEP in the best value tradeoff will not produce a misleading result as [to] the proposals’ relative prices, but instead will provide a more accurate view of the current need.” *Id.* at 2. Thus, we deny the protest allegation because the evaluation methodology effectively incorporates a “notional estimate,” which we agree will allow the agency to obtain a meaningful understanding of the relative price implications of competing proposals.

Evaluation of Fair and Reasonable Pricing

WJM asserts that the RFP unreasonably provides that an offeror will be evaluated as ineligible if one of the proposed labor rates for the zero-hour labor categories is considered unreasonably high. Protest at 10-11. WJM contrasts this with the estimated labor categories, arguing that those rates will not be evaluated for fair and reasonable pricing individually but rather the TEP, as a whole, will be evaluated. *Id.* at 11. Thus, WJM argues that the dual methodologies for assessing price reasonableness yields inconsistent, conflicting provisions. *Id.* The Coast Guard responds that the price reasonableness methodologies are reasonable, and that WJM relies on an inaccurate interpretation of the RFP. COS/MOL at 7-9.

As a general rule, a solicitation must be drafted in a fashion that enables offerors to intelligently prepare their proposals and must be sufficiently free from ambiguity so that offerors may compete on a common basis. *Seventh Dimension, LLC*, B-417630.2, B-417630.3, Dec. 26, 2019, 2020 CPD ¶ 12 at 5.

Regarding fair and reasonable pricing, the FAR requires that an agency establish that all proposed prices are reasonable (*i.e.*, not too high) when acquiring commercial services through competitive negotiations. FAR 12.209; 15.402. An agency may use

² During the development of this protest, GAO requested that the agency explain whether the TEP incorporated a “notional estimate.” GAO Req. for Information at 1. The agency responded that the TEP did not incorporate a “notional estimate” because it reflected the current level of effort. Resp. to GAO Req. for Information at 2. While we recognize that the TEP was not developed as “notional estimate,” we still think it qualifies as one for purposes of this acquisition since it reflects a reasonable projection of the services to be procured.

various price analysis techniques to ensure a fair and reasonable price, including a comparison of proposed prices received, of historical prices paid, or a comparison with the internal government cost estimate. FAR 15.404-1(b)(2).

Here, we do not object to the RFP's approach to assessing price reasonableness. First, we disagree with the protester that the RFP contains conflicting provisions. The RFP contemplates evaluating price reasonableness differently for the estimated labor categories and the zero-hour labor categories. See RFP at 70-71. For the TEP (*i.e.*, the estimated labor categories), the agency will compare the TEPs against one another; for the zero-hour labor categories the agency will compare the individual labor rates against the corresponding labor rates from competing proposals. *Id.*; see also MOL at 5. Thus, consistent with the agency's position, we do not view the RFP's price reasonableness evaluation methodology as conflicting because the approach does not contain clashing or overlapping provisions.³

Second, we disagree with the protester that the dual methodologies are objectionable. The FAR expressly permits the agency to compare proposed prices to determine reasonableness. FAR 15.404-1(b)(2). Further, we do not object to the approach because both manners of comparison are standard practices, and WJM does not demonstrate that using them simultaneously compromises the evaluation or will produce misleading results. See, e.g., *AMTIS-Advantage, LLC*, B-411623, B-411623.2, Sept. 16, 2015, 2015 CPD ¶ 360 at 11 (agency determined that awardee's proposed price was reasonable by comparing total price); *LATA-Atkins Tech. Servs., LLC*, B-418602, B-418602.4, June 10, 2020, 2020 CPD ¶ 192 at 6-7 (explaining that agency would determine price reasonableness by using proposed labor rates). Accordingly, we deny the allegation.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

³ WJM also argues that the dual price reasonableness evaluation methodologies effectively constitute subfactors, and that the RFP fails to assign any evaluative weight. We disagree because the RFP does not establish pricing subfactors; rather, it simply communicates that the price reasonableness evaluation will be conducted in two parts. Further, even if the RFP contained pricing subfactors, the RFP effectively advises as to the amount of evaluative weight for each subfactor when it advises how the different groups will be factor into the determination. See RFP at 71 ("If the Government determines that the Total Evaluation Price or the zero hour labor category rates are not fair and reasonable, an offeror will not be eligible for award.").