



Decision

Matter of: MGM Computer Systems, Inc.

File: B-422741

Date: October 16, 2024

Michael Maurer for the protester.
Natica Chapman Neely, Esq., Department of Veterans Affairs, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Cancellation of request for quotations was reasonable where the only quotation being considered was substantially higher-priced than the agency's available funding.

DECISION

MGM Computer Systems, Inc., a service-disabled veteran-owned small business (SDVOSB) located in Galloway, New Jersey, protests the cancellation of request for quotations (RFQ) No. 36C26124Q0444, issued by the Department of Veterans Affairs (VA) for a patient elopement wander management system at the VA Central California Healthcare System in Fresno, California. The protester contends the agency lacked a reasonable basis to cancel the solicitation.

We deny the protest.

BACKGROUND

On March 6, 2024, the VA published the RFQ on the System for Award Management website as a set-aside for SDVOSBs, under the commercial item acquisition and simplified acquisition procedures of Federal Acquisition Regulation (FAR) parts 12 and 13. Agency Report (AR), Exh. 2, RFQ at 1, 44. The solicitation contemplated the award of a fixed-price contract for the WanderGuard BLUE patient elopement wander management system or an equivalent system. *Id.* at 1.

The solicitation provided that award would be made to the responsible vendor whose quotation, conforming to the RFQ, would be the most advantageous to the government, considering the following factors: (1) price; (2) capability of proposed system (if other

than the brand name system); and (3) an authorized distributor letter issued by the original equipment manufacturer (OEM) within the past year.¹ *Id.* at 39, 44-45.

The RFQ instructed that quotations would be evaluated using a “comparative evaluation” process pursuant to FAR section 13.106-2(b)(3), to determine which quotation provided the best value to the government. *Id.* at 44. The solicitation advised that before conducting the comparative evaluation, the agency would first screen quotations for completeness and conformance with the RFQ requirements; only complete and conforming quotations were to be evaluated by the VA. *Id.*

As relevant to this protest, the funding available for this procurement was \$110,000. AR, Exh. 6, Funding Document at 3. The agency’s independent government cost estimate (IGCE) also amounted to \$110,000. Contracting Officer’s Statement (COS) ¶ 7.

The VA received two quotations in response to the solicitation, including one from MGM. *Id.* ¶ 4. During the initial evaluation of quotations, the agency rejected the one quotation received from a firm other than MGM because the agency found it to be incomplete. *Id.* ¶ 5.

MGM’s quotation included an authorized distributor letter from CenTrak, the OEM for MGM’s quoted system, which was dated October 16, 2019. *Id.* ¶ 6; AR, Exh. 3, MGM’s Quotation at 25. Although MGM’s distribution letter did not comply with the RFQ’s instructions--per the terms of the solicitation it had to be issued within one year and MGM’s letter was more than four years old--the VA did not note the problem during the compliance check and proceeded with evaluating MGM’s quotation.² COS ¶ 12.

After completing its evaluation, the agency concluded that MGM’s quotation met “all specifications,” however, the agency had concerns about the reasonableness of MGM’s price. AR, Exh. 4, Technical Evaluation at 1. Specifically, the contracting officer contacted MGM via email, stating that:

VA is having a difficult time determining your quot[ation] to be priced fair and reasonable. The quot[ation] is priced significantly higher than our [IGCE] and your [contract line item number] pricing exceeds appropriated funding that the VA has allocated for this action.

AR, Exh. 5, Email Exchanges Between MGM and Agency at 10. The contracting officer then asked if the protester could provide “any discounts” to its price of \$272,174. *Id.*; see also AR, Exh. 3, MGM’s Quotation at 17. In response, MGM submitted a revised

¹ That requirement applied in instances where the firm submitting the quotation was not the manufacturer. RFQ at 39.

² The contracting officer explains that he only noted that the CenTrak letter was outdated after the agency had concluded its evaluation of MGM’s quotation. COS ¶ 12.

quotation and reduced its price to \$248,174. AR, Exh. 7, MGM's Revised Quotation at 15.

Around the same time, another VA healthcare system team contacted CenTrak, seeking a list of its authorized SDVOSB distributors. AR, Exh. 8, Email Exchange Between VA Palo Alto Health Care System and CenTrak at 3. Notably, the list provided by CenTrak did not include MGM. *Id.* at 2.

On June 5, the agency cancelled the solicitation. RFQ at 67-68. The contracting officer states that the RFQ was cancelled, “[i]n large part, because MGM was not an authorized distributor for CenTrak and because MGM failed to meet the RFQ’s one-year requirement for the authorized distributor letter.” COS ¶ 13. The contracting officer further noted that:

MGM’s revised quote exceeded available funds and significantly exceeded the IGCE. Additionally, I cancelled the RFQ because another contracting vehicle had been located that would allow [the VA Central California Healthcare System] to procure its required system at a potential cost savings.

COS ¶ 13. Following the cancellation, the agency explained to MGM that it had “determined it is in the [g]overnment’s best interest to change procurement strategy and transfer the procurement of this requirement to VA’s Tactical Acquisition Center [(TAC)] who specializes in the procurement of [information technology].” AR, Exh. 5, Email Exchanges Between MGM and Agency at 1.

On June 11, the protester filed an agency-level protest, challenging the cancellation of the solicitation. AR, Exh. 9, Agency-Level Protest. The agency denied the protest on the basis that MGM’s proposed price “vastly exceeded” the IGCE, and that the VA reasonably decided that an existing TAC contract “would better serve VA’s needs.” AR, Exh. 10, Agency-Level Protest Decision at 1. This protest followed.

DISCUSSION

The protester challenges the decision to cancel the solicitation, arguing that “there were no valid reasons” for the agency to do so. Protest at 4. MGM contends the “CenTrak-Elpas solution” proposed by the protester “met and/or exceeded the solicitation requirements,” and argues it should have received “the long anticipated award.” *Id.* at 2, 4. MGM also refutes the agency’s conclusion that the protester was not an authorized CenTrak distributor, providing multiple examples of recent work completed on “CenTrak infrastructure.”³ *Id.* at 4.

³ MGM also raises other collateral arguments. Although not addressed in this decision, we have considered the protester’s various arguments and conclude that none provide a basis to sustain the protest.

The agency defends its cancellation decision, explaining that there were several flaws in the RFQ warranting cancellation.⁴ MOL at 7-10. In addition, the VA maintains that the solicitation “overstates the agency’s minimum needs,” and that its cancellation and the issuance of a revised solicitation “would present the potential for increased competition.” *Id.* at 10-12. Importantly, the agency also states that cancellation was appropriate because both the IGCE and the budget for the instant procurement totaled approximately \$110,000, and MGM’s revised price substantially exceeded that amount. *Id.* at 12. The VA states that after the RFQ was cancelled, all “[fiscal year] 2024 funds available for this procurement were swept,” so there are no longer “funds currently available” for this requirement. *Id.*

We have reviewed the record and for reasons explained below, find no basis to sustain the protest.

A contracting agency has broad discretion in deciding whether to cancel a solicitation and need only establish a reasonable basis for doing so. *Firetech Automatic Sprinkler*, B-295882, May 4, 2005, 2005 CPD ¶ 146 at 3; *Quality Tech., Inc.*, B-292883.2, Jan. 21, 2004, 2004 CPD ¶ 29 at 2-3; *DataTrak Consulting, Inc.*, B-292502 *et al.*, Sept. 26, 2003, 2003 CPD ¶ 169 at 5. So long as there is a reasonable basis for doing so, an agency may cancel an RFQ regardless of when the information precipitating the cancellation first arises, even if it is after quotations have been submitted and evaluated, or even if it is discovered during the course of a protest. *Quality Tech., Inc.*, *supra*; *DataTrak Consulting, Inc.*, *supra*.

It is also well established that an agency’s lack of funding for a procurement provides a reasonable basis for cancellation, as agencies may not award contracts that exceed available funds. *Quality Support, Inc.*, B-296716, Sept. 13, 2005, 2005 CPD 172 at 2. Moreover, it is not our role to question the unavailability of funds. See *VetPride Servs., Inc.*, B-401435, July 28, 2009, 2009 CPD ¶ 156 at 2. Further, an agency may properly cancel a solicitation due to funding limitations regardless of any challenge to the validity of the agency’s underlying cost estimate; agencies simply cannot create obligations that exceed available funds. *Firetech Automatic Sprinkler*, *supra*.

Here, the record demonstrates that MGM’s quoted price substantially exceeded the funding available for this procurement. AR, Exh. 6, Funding Document at 3. Furthermore, the agency represents--and the protester does not dispute--that the VA made efforts to secure additional funding, which, ultimately, were unsuccessful. COS ¶ 10. The record also reveals that the agency invited MGM to provide “discounts” to its

⁴ The agency states that although the RFQ was intended to be issued “as an SDVOSB set-aside,” the solicitation failed to include the required SDVOSB set-aside clause, VA Acquisition Regulation (VAAR) clause 852.219-73, and the required limitations on subcontracting certification clause, VAAR clause 852.219-75. Memorandum of Law (MOL) at 1 n.1 (*citing* RFQ at 15-32). The VA also notes that the RFQ inappropriately included the FAR small business set-aside clause 52.219-6. *Id.* (*citing* RFQ at 26).

proposed price, in an unsuccessful attempt to reduce pricing to an amount that would align with the IGCE and the available funding for this procurement. *Id.* ¶¶ 9-10. Under these circumstances, we have no basis to object to the cancellation of the solicitation.

The protester does not rebut the agency's contention that the VA's lack of funding provides a valid basis for the cancellation of the solicitation. Rather, MGM argues that it proposed a reasonable price and that the agency's IGCE failed to properly account for a significant change to the original RFQ requirement included in the amended solicitation and the associated increased cost. Comments at 2 (referring to the question-and-answer amendment to the RFQ). To the extent this argument challenges the agency's decision to set funding at a level that would allegedly not meet its needs, it is not our role to question the unavailability of funds. *VetPride Servs., Inc., supra* at 3. To the extent this argument asserts that the agency should not have amended its requirements, we will not substitute our judgment for that of the VA, concerning the agency's needs, and how to accommodate them. *Chromalloy Component Servs., Inc., B-417362.2*, Nov. 6, 2019, 2019 CPD ¶ 382 at 4. Our Office has consistently stated that a protester's disagreement with an agency's judgment concerning the agency's needs and how to accommodate them, without more, does not establish that the agency's judgment was unreasonable. *Id.* As a result, we find the protester's challenges here to be without merit.

Last, we note that over the months, the VA provided MGM with different reasons as to why the solicitation was cancelled. For example, the agency initially told MGM that the VA had decided to change its procurement strategy and transfer the procurement of this requirement to the VA's TAC. AR, Exh. 5, Email Exchanges Between MGM and Agency at 1. Later, in a decision responding to the protester's agency-level protest, the VA stated that MGM's proposed price "vastly exceeded" the IGCE, and that the VA decided that an existing TAC contract "would better serve VA's needs." AR, Exh. 10, Agency-Level Protest Decision at 1. It appears that the agency report submitted in response to the instant protest was the first time the agency explained to MGM that a basis for the cancellation was MGM's high proposed price exceeding the available funding for the requirement. MOL at 11-12.

Although the lack of funding was not identified as a reason for cancellation until after the RFQ had already been cancelled, our Office has repeatedly explained that a new or additional rationale provided by an agency during the development of a protest, justifying the cancellation of a solicitation, is acceptable so long as it would have supported cancellation had it been advanced originally. *TaxSlayer, LLC*, B-411101, May 8, 2015, 2015 CPD ¶ 156 at 9; *Peterson-Nunez Joint Venture*, B-258788, Feb. 13, 1995, 95-1 CPD ¶ 73 at 5. Here, the record clearly reflects that the lack of funding would have supported cancellation had it been advanced originally, as, at the time of cancellation, the VA had determined that MGM's price far exceeded the available

budget and, in light thereof, had withdrawn the funding that would permit any award. AR, Exh. 6, Funding Document at 3; COS ¶¶ 8-9.

The protest is denied.

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