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Decision

Matter of: MCI Diagnostic Center, LLC

File: B-422777; B-422777.2

Date: October 21, 2024

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DIGEST

Protest that the agency's determination of price reasonableness was unreasonable is denied where the agency compared the protester's price to an independent government estimate that was based on the agency's historical costs for the requirement and a reasonable estimate regarding increased future usage.

DECISION

MCI Diagnostic Center, LLC, a service-disabled veteran-owned small business (SDVOSB) of Richardson, Texas, protests the exclusion of its proposal from the competition, under request for proposals (RFP) No. 36C26324R0072, issued by the Department of Veterans Affairs (VA) for laboratory testing services. The protester argues that the agency unreasonably evaluated its technical proposal. In addition, MCI alleges that the VA's price reasonableness analysis of its proposal was unreasonable.

We deny the protest.

BACKGROUND

Using the procedures of Federal Acquisition Regulation (FAR) part 15, the agency issued the RFP on May 21, 2024, as a set-aside for SDVOSBs. Agency Report (AR),

Exh. 3, RFP at 17.¹ The solicitation seeks medical laboratory and testing analysis services to support the VA facilities within Veterans Integrated Service Network (VISN) 23. *Id.* The RFP contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract with a 5-year period of performance. RFP at 11, 17.

The RFP provided for award on a best-value tradeoff basis considering the following factors: technical excellence, past performance, and price. RFP at 89. Technical excellence was considered equal to past performance, and when combined, these factors were significantly more important than price. *Id.* at 90. The solicitation also advised that the procurement would be conducted using a tiered evaluation, with the following tiers: (1) SDVOSB concerns, (2) Veteran-owned, small business concerns (VOSB), (3) all other small business concerns with 8(a) and historically underutilized business zone (HubZone) businesses having priority, and (4) large business concerns. RFP at 90.

The agency received proposals from four SDVOSB offerors, including MCI. AR, Exh. 5, Source Selection Decision (SSD) at 1; COS at 2. The agency rejected two of the proposals for failing to comply with the solicitation's terms. AR, Exh. 5, SSD at 1. The agency then conducted technical and price evaluations of the remaining two SDVOSB proposals. *Id.* at 2-8. Both proposals were found to be unacceptable under the technical excellence factor. *Id.* As relevant here, the agency found MCI's technical proposal unacceptable overall based on numerous deficiencies and significant weaknesses assessed to MCI's proposal under this factor.² *Id.*

In evaluating price, the agency compared MCI's overall price and its price for each year of performance to the overall and annual prices in the agency's independent government cost estimate (IGCE). *Id.* at 4. The agency found that MCI's price for each year, as well as MCI's overall price, were 30.49 percent above the IGCE price. *Id.* As

¹ The solicitation was amended once. Contracting Officer's Statement (COS) at 2. All citations to the RFP are to the final version as amended. Citations to the record are to the Adobe PDF document pages.

² For example, the agency assessed the following deficiencies under the technical excellence factor: (1) one deficiency for failing to identify performing laboratories for certain tests and trademarked names, and (2) two deficiencies for failing to address performance work statement (PWS) subsections concerning handling specimens for testing and failing to provide a copy of MCI's specimen rejection policy. AR, Exh. 5, SSD at 3. The agency also assigned the following significant weaknesses under the technical excellence factor: (1) for failing to adequately explain its approach for the [DELETED] identified as the performance laboratories for performing tests, and (2) for failing to demonstrate that MCI's proposal could meet the RFP requirements to perform [DELETED] tests in-house. *Id.* at 4-5. In addition, the agency assessed a rating of marginal to MCI's proposal under the technical excellence factor for insufficiently describing how MCI would address the requirements for multiple PWS subsections. *Id.* at 3-4.

such, the agency found that it could not determine MCI's proposed price fair and reasonable. *Id.* Because the agency could not award to any of the SDVOSB proposals, the SSA determined that it was in the best interest of the government to close the SDVOSB/VOSB³ tier of evaluations and proceed with reviewing the next tier of evaluations. *Id.* at 8.

Thereafter, on July 16, 2024, the agency issued unsuccessful offeror notices to all four SDVOSB offerors, which included a written pre-award debriefing in accordance with the procedures of FAR section 15.505. COS at 2-3. On July 25, MCI filed the instant protest with our Office, challenging the agency's determination to exclude MCI's proposal from the competition.

DISCUSSION

MCI contends that the agency conducted an unreasonable and inadequate price reasonableness analysis, arguing that the agency relied on a flawed IGCE to determine that MCI's proposed price was not fair and reasonable. Comments & Supp. Protest at 1-7. For the reasons discussed below, we find that the agency reasonably determined that MCI's proposed price was not fair and reasonable, and that MCI's proposal was therefore not eligible for award. We deny the protest on this basis. In light of our conclusion that based on the agency's price evaluation, the agency reasonably found MCI's proposal ineligible for award, we find that MCI is not prejudiced by any errors in the agency's technical evaluation.

Agencies are required to ensure that the award of any contract is at a fair and reasonable price. See FAR 15.404-1. The purpose of conducting a price reasonableness evaluation in a fixed-price environment is to determine whether prices are too high. *Root9B, LLC*, B-417801, B-417801.2, Nov. 4, 2019, 2020 CPD ¶ 4 at 7. A price reasonableness determination is a matter of agency discretion involving the exercise of business judgment. *REEL COH Inc.*, B-418095, B-418095.2, Jan. 10, 2020, 2020 CPD ¶ 55 at 5. Where a protester alleges that an agency's determination regarding fair and reasonable pricing was flawed or improper, our Office will review the agency's determination for compliance with applicable law and regulation and will consider whether the agency's determination was reasonable. See *Vectrus Sys. Corp.*, B-419143, B-419143.2, Dec. 23, 2020, 2021 CPD ¶ 138 at 14-15. Where an agency properly determines that a proposal offers unreasonably high prices, it may reject that proposal solely on that basis. *REEL COH, Inc.*, *supra* at 5.

As relevant here, the RFP informed offerors that their price proposals would be evaluated for fairness and reasonableness using any of the techniques specified in FAR section 15.404-1(b)(2). RFP at 92. As noted above, in evaluating price, the agency compared MCI's overall price and its price for each year of performance to the overall and annual prices in the IGCE. AR, Exh. 5, SSD at 4. The contracting officer's representative (COR) who prepared the government estimate explains in response to

³ The agency did not receive any proposals from VOSBs. COS at 2.

the protest that she based the IGCE on the current contract for the requested services, which is a contract with Quest Diagnostics Inc. Supp. Memorandum of Law (MOL), exh. 1, Decl. of COR at 1-2. The COR states that the current contract with Quest is a “three-year indefinite-delivery indefinite-quantity (IDIQ) contract with three ordering periods” and that at the time she developed the IGCE for the instant acquisition, “the current contract was in the second ordering period that began on November 1, 2022, which was in fiscal year (FY) 2023.” *Id.* at 2.

In preparing the IGCE, the COR notes that she “reviewed the payment history in VA’s Invoice Payment Processing System (IPPS) to assess how much money had been spent on each purchase order to date.” *Id.*; *see also id.*, attach. A, Fiscal Year 2023 Comparison at 9-18. The COR further explains that “[r]elying on the most recent 12 months of payment history was the most accurate way of estimating the costs for the next procurement” and that “[o]ver time, the IDIQ contract with Quest was modified to add new tests.” *Id.* The total amount spent for FY 2023 was \$2,291,788. *Id.* at 3. The COR explains that, for the IGCE, she “estimated a cost of \$[DELETED] per year for the acquisition for a new five-year contract because this amount was consistent with the amount spent during the most recent 12-month ordering period.” *Id.* She states that the “\$[DELETED] annual estimate would allow for fluctuations and increases in the quantities of each test ordered in the future as well as the possibility for higher per-test costs since the contract with Quest had been awarded and the likelihood that newly developed tests would be added to the new contract over time through contract modifications.” *Id.* The COR states that the “IGCE of \$[DELETED] annually and \$[DELETED] over five years is a good faith, reasonable estimate of the costs for the new contract.” *Id.*

In evaluating MCI’s price proposal, the agency found that MCI’s price for each year, as well as MCI’s overall price, were 30.49 percent above the IGCE price. AR, Exh. 5, SSD at 4. As such, the agency found that it could not determine that MCI’s proposed price was fair and reasonable. *Id.*

In challenging the agency’s evaluation, MCI argues that the VA’s price reasonableness evaluation was deficient because it was based on a comparison to a flawed IGCE, which the protester asserts, did not provide an “apples to apples” comparison of prices. Comments & Supp. Protest at 5; Supp. Comments at 2. In particular, the protester maintains that the “incumbent contract price alone, without consideration of any differences in the scope of that contract,” failed to provide “an adequate price comparison.” Comments & Supp. Protest at 3. Based on the assertion that the IGCE was flawed, the protester contends that the agency should have engaged in other price reasonableness techniques, such as comparing MCI’s price to that of the offers in the remaining evaluation tiers. *Id.* The agency responds that its IGCE was not flawed and that its price reasonableness analysis was reasonable.

We conclude that the VA reasonably found MCI’s proposed price to be unreasonably high, and that the record supports the agency’s position that MCI’s proposal therefore was rendered unawardable. RFP at 91 (stating that “[t]o be eligible for award, [o]fferors

must submit pricing that the [c]ontracting [o]fficer determines to be fair and reasonable.”). The record reflects that the agency evaluated price reasonableness consistent with the solicitation by comparing MCI’s proposed prices with the IGCE. AR, Exh. 5, SSD at 4. This price evaluation method is identified in the FAR as an acceptable way to ensure that the government awards contracts at fair and reasonable prices. FAR 15.404-1(b)(2)(i), (v). The solicitation also expressly stated that the agency may use this method to evaluate price reasonableness. RFP at 92. Although MCI asserts that the IGCE is flawed because it fails to consider differences between the scope of the incumbent contract and instant contract, as the contracting officer explains and the record reflects, the incumbent contract with Quest was modified during performance to add new tests and the IGCE was also increased to account for expected price increases in per-test costs and testing quantities. AR, Exh. 5, SSD at 4; Supp. MOL, Exh. 1, Decl. of COR at 1-2; *id.*, attach. A, Fiscal Year 2023 Comparison at 9-18. While the protester ultimately believes that a more detailed or different reasonableness assessment was necessary, as noted above, a price reasonableness determination is a matter of agency discretion involving the exercise of business judgement. *REEL COH Inc.*, *supra* at 5. We therefore find nothing unreasonable about the agency’s price evaluation here. Given that MCI’s price was found to be unreasonably high, we also find reasonable the agency’s position that MCI’s proposal was unawardable.

Since the record supports the rejection of MCI’s proposal on the basis its proposed price was not fair and reasonable, MCI was not competitively prejudiced by any errors regarding the evaluation of its technical proposal. Competitive prejudice is an essential element of any viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency’s actions arguably were improper. *VSolvit, LLC*, B-418265.2, B-418265.3, July 30, 2020, 2020 CPD ¶ 259 at 6. Here, even if MCI could show that the evaluation of its technical proposal was unreasonable, its proposal was properly rejected as ineligible for award. Accordingly, we do not address the protester’s complaints regarding the technical evaluation of its proposal.

The protest is denied.

Edda Emmanuelli Perez
General Counsel