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Comptroller General
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Decision

Matter of: Valor Healthcare, Inc.

File: B-418606.2; B-418606.3

Date: January 21, 2021

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Craig A. Holman, Esq., Nathaniel E. Castellano, Esq., and James R. S. Mestichelli, Esq., Arnold & Porter Kaye Scholer, LLP, for STG International, Inc., the intervenor.
Daniel J. McFeely, Esq., Department of Veterans Affairs, for the agency.
Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's price evaluation and selection decision is denied where the record shows that both were reasonable and in accordance with the terms of the solicitation.

DECISION

Valor Healthcare, Inc., of Addison, Texas, protests the award of a contract to STG International, Inc. (STGi), of Arlington, Virginia, under solicitation No. 36C26219R0026, issued by the Department of Veterans Affairs (VA) for five community-based outpatient clinics (CBOCs) in the VA's Loma Linda Healthcare System (VALLHS).[1] The protester contends that the agency's evaluation of its price as unreasonable was based on a flawed independent government cost estimate (IGCE) and resulted in an unreasonable evaluation and selection decision. The protester further contends that STGi's proposal contained errors and omissions that render the proposal ineligible for award such that the agency should have rejected the proposal or required STGi to correct it.

We deny the protest.

[1] The five CBOCs are to be located in Corona, Murrieta, Palm Desert, Rancho Cucamonga, and Victorville, California. Agency Report (AR), Exh. 1, Solicitation at 83.

BACKGROUND

The solicitation, issued on August 2, 2019, using the procedures of Federal Acquisition Regulation (FAR) parts 12 and 15, contemplated the award of five fixed-price lease contracts (one lease for operating space for each CBOC), and a fixed-price indefinite-delivery, indefinite-quantity contract for medical services at each of the CBOCs. Solicitation at 73, 78, 83, 214.[2] The purpose of the contract is to provide primary care, mental health, audiology and other specialty care services in a private office or clinic environment to veterans primarily residing in San Bernardino and Riverside Counties, California. *Id.* at 83. The period of performance includes a base year and four 1-year option periods, and the maximum aggregate order value is $110 million. *Id.* at 78, 82.

The solicitation stated that award would be made to the responsible offeror whose proposal was most advantageous to the government, price and other factors considered. *Id.* at 218. Proposals would be evaluated under the following factors, listed in descending order of importance: (1) activation and transition plan, (2) facility layout, (3) proposed sites, (4) experience, (5) price, (6) past performance, and (7) veteran involvement. *Id.* at 218-219. All non-price factors, when combined, were significantly more important than price for the purpose of determining the best value to the government. *Id.* at 219. All leased space was required to meet certain minimum codes and design standards consistent with the clinical services to be provided at each CBOC. *Id.* at 128.

The solicitation required that offerors propose two categories of prices as follows:

> 1) Schedule of Services and Price-Section B.2. Pricing submitted shall be for enrolled patients on a "per-member per month (PMPM)" basis and shall represent an "all inclusive" reimbursement for all requirements as described in the [performance work statement].
>
> 2) Schedule of Services and Price-Section F 1.07. Pricing submitted shall be for the requested space required for VA Staff for Mental Health, Audiology, and other Specialty care at each clinic.[[3]]

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[2] The solicitation was amended nine times. Citations are to the conformed copy of the solicitation provided by the agency. In addition, with the exception of the offerors' proposals provided at Exhibits 16 and 17, the agency produced a Bates-stamped record for Exhibits 1 through 15. For those exhibits, page citations in this decision are to the Bates-stamped page numbers.

[3] Regarding the PMPM prices, the solicitation stated that "[p]rices in this schedule represent an all-inclusive rate including labor, facility, incidental costs, and overhead. Costs not incorporated into the contractor's price will not be reimbursed by the Government." Solicitation at 78. Regarding the lease prices, the solicitation stated that "[t]he Rent Schedule reflects an all-inclusive rental rate and there shall be no other

Id. at 210. For the PMPM prices in section B of the solicitation, the agency set forth an estimated quantity of patients, and for the lease prices in section F, the agency set forth the estimated rental square feet. *Id.* at 78-82, 243-248. The solicitation stated that the price factor "will be used to assess the reasonableness of the offerors['] proposed pricing." *Id.* at 219.

On March 12, 2020, the agency issued an award to STGi. AR, Exh. 2, Contracting Officer's Statement (COS) at 610. Valor protested the award with our Office, and the agency advised that it would take corrective action; accordingly, we dismissed the protest as academic. *Valor Healthcare, Inc.*, B-418606, Apr. 10, 2020 (unpublished decision).

During corrective action, the agency amended the solicitation, accepted and evaluated revised proposals, and made a new selection decision. COS at 610-611. As relevant to the protest allegations, the solicitation was amended to disclose to offerors that the agency's IGCE was $130,656,368. Solicitation at 6-7. The agency explained that this was the total amount "estimated it would cost the Government to acquire the leased space and services required by the solicitation, for the estimated number of enrolled patients" and "for the amount of leased space" identified in the solicitation. *Id.*

In the agency's final evaluation, Valor and STGi were equally rated in all of the non-price factors. AR, Exh. 3, Source Selection Decision (SSD) at 628. Valor's total proposed price was $159,542,622, and STGi's was $126,566,640. *Id.* at 627. Regarding Valor's proposed price, the agency concluded as follows:

> Valor's proposed pricing for the PMPM requirement [of] $146,637,473.76 was 22.5% higher than the PMPM IGCE [of] $119,619,817.99, and their proposed price for the lease/space [of] $12,905,148.26 was 16.9% higher than the amount the Government estimated for the IGCE [of] $11,036,550.00 for leasing costs. The total proposed price offered by Valor of $159,542,622.02 is 22% above the total IGCE of $130,656,367.99. Based on the overall offered price of $159,542,622.02 and [in] comparison to the IGCE, I have determined that the proposed pricing offered by Valor is not reasonable. Valor's offered price for the base requirement plus all option periods fails to meet the standard for price reasonableness established for this procurement.

Id. On October 7, the agency notified Valor that STGi was again selected for award. COS at 611. Valor was provided a debriefing, and this protest followed.

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adjustment[s] throughout the [Lease] Term, except as provided elsewhere in the Contract." *Id.* at 47, 243.

DISCUSSION

Valor challenges the agency's price evaluation and selection decision. Specifically, the protester contends that the agency unreasonably concluded that Valor's price was not reasonable. Protest at 23-25; Comments & Supp. Protest at 15-16. The protester argues that had the agency realized that STGi's low price was flawed, it would have also realized the IGCE was flawed. Comments & Supp. Protest at 16. In addition, the protester argues that the agency should have rejected STGi's proposal because it omits the costs of renovation for the CBOCs, and did not properly complete the forms required by the solicitation and provide information necessary to evaluate STGi's price, contrary to the solicitation requirements. *Id.* at 3-13.

The agency argues that its IGCE was reasonable and properly used in the price evaluation to conclude that Valor's price was unreasonable. Memorandum of Law (MOL) at 31-42. The agency further argues that the alleged omissions identified by Valor in STGi's proposal were not required by the solicitation and were immaterial to the evaluation of proposals. The agency contends the selection of STGi for award was reasonable. Supp. MOL at 2-20. Although we do not specifically address all of Valor's arguments, we have fully considered all of them and find that they provide no basis on which to sustain the protest.[4]

Here, the record shows that the IGCE was prepared using VA-required cost estimating tools, in consultation with subject matter experts, and based on historical experience; the IGCE included cost components such as medical staffing, CBOC rents and renovation costs, laboratory courier services, supplies, information technology, and furniture and equipment. AR, Exh. 5, Decl. of CBOC Contract Manager/VALLHS Contracting Officer Representative at 790-792. The initial IGCE was $106,966,705, but in February 2020, the agency updated and increased the IGCE to $130,656,368, primarily to include previously excluded renovation costs, as well as to add the estimated cost of an additional clinical pharmacy specialist at two facilities. AR, Exh. 6, Acquisition Plan with Addenda at 802, 809. More specifically, the initial IGCE was based on a partial renovation of a clinic and the VA believed that a full renovation was required. *Id.* at 802. As a result, the agency increased its estimated renovation costs from $150 to $350 per square foot. *Id.* In its price analysis, the agency established that a proposed price "which is not more than 15% higher than the IGCE [would be] considered reasonable." AR, Exh. 3, SSD at 625.

A price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment by the contracting officer that we will question only where it is unreasonable. *AAR Airlift Group, Inc.*, B-414690 *et al.*, Aug. 22, 2017, 2017 CPD ¶ 273 at 9. The FAR permits the use of various price analysis techniques and

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[4] In its protest, Valor initially challenged the agency's evaluation of STGi's compliance with the solicitation's seismicity requirements, and its evaluation of STGi under the experience and past performance factors, however, these allegations were withdrawn after the agency filed its report. Comments & Supp. Protest at 1 n.1.

procedures to ensure fair and reasonable prices, including the comparison of proposed prices received in response to the solicitation to each other or to an independent government estimate. FAR 15.404-1(b)(2); *Comprehensive Health Servs., Inc.*, B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 8. The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. *Advanced Sys. Tech. & Mgmt., Inc.*, B-291529, Dec. 20, 2002, 2002 CPD ¶ 219 at 4.

On this record, we find the agency's evaluation of Valor's proposal to be reasonable. As noted, the VA disclosed the revised IGCE to offerors in the solicitation amendment issued during the corrective action implemented following Valor's prior protest, and the solicitation stated that proposed prices would be assessed for reasonableness. Solicitation at 6-7, 219. Valor was provided an opportunity to submit a revised proposal. AR, Exh. 3, SSD at 615. Even though the agency disclosed its $130,656,368 IGCE, Valor submitted a proposed price of $159,542,622. AR, Exh. 3, SSD at 627. According to Valor, the differences between the IGCE and its proposed price relate to disagreement on operating (medical supplies, general supplies, laboratory, staff salaries, etc.) and non-recurring costs (furniture, IT infrastructure, etc.). Comments & Supp. Protest at 9-10 (explaining that Valor's base year PMPM price was more than twice the amount of the IGCE because it was Valor's approach to [DELETED], but that "Valor and the IGCE have relatively similar estimated costs for rent and renovation.").

Yet, Valor also argues that the agency should have concluded that there was a flaw in the IGCE, and that STGi's price contained errors, simply because they were lower when compared to Valor's price. *Id.* at 16 ("The value of the renovations is approximately $35 million. Had the Agency properly recognized this flaw in STGi's proposed pricing, it would have concluded that STGi's and Valor's proposed prices would have been similar and that the IGCE was inaccurate."). Insofar as the crux of Valor's protest is that its proposed price established the standard against which alleged flaws in the IGCE should have been identified, and against which STGi's price should have been assessed in the agency's evaluation, the protester has not demonstrated that the agency's evaluation lacks a reasonable basis. *Advanced Sys. Tech. & Mgmt., Inc.*, *supra*. We find the agency's conclusion that Valor's proposed price was unreasonable to be unobjectionable.

Regarding the evaluation of STGi's price, Valor argues that the STGi proposal should have been rejected because it omitted renovation costs that the solicitation required offerors to include in their proposed prices. Comments & Supp. Protest at 10-13. More specifically, Valor argues that STGi's proposal should have been rejected because it omitted information regarding its proposed rent components as required by GSA Form 1364A-1 (Simplified Lease Proposal Data), information necessary for the agency to evaluate STGi's price. Comments & Supp. Protest at 13-15.

The solicitation required that offerors complete and submit the GSA simplified lease proposal data form for each CBOC lease in its proposal. Solicitation at 252-253. The form includes categories for offerors to insert proposed rent components on a rent per square foot per year basis such as for building shell rent, turnkey tenant improvement rent, and operating rent, as well as other costs. *Id.* at 295. The record shows that STGi's proposal omitted this information from the forms included in its proposal. See AR, Exh. 16, June 2020 STGi Revised Proposal Lease Proposal at 9 (Corona); October 2019 STGi Lease Proposals at 28 (Murrieta), 48 (Palm Desert), 68 (Rancho Cucamonga), and 88 (Victorville).

However, contrary to the protester's allegation, the solicitation did not require that the agency otherwise evaluate the components of an offeror's proposed prices in its evaluation. Further, the solicitation did not require a price realism analysis. Rather, as noted, the solicitation required only that offerors submit proposed prices for PMPM medical services and lease space for each facility, and that the agency evaluate the reasonableness of those prices. Solicitation at 210, 219. In its evaluation of STGi's proposed prices, the agency concluded as follows:

> STGi's proposed pricing [of] $123,686,426.28 for the PMPM requirement was 3.39% higher than the PMPM IGCE of $119,619,817.99, however their proposed price for the lease/space of $2,880,213.70 was approximately 73% below the amount the Government estimated for the IGCE of $11,036,550.00 for leasing costs. The total proposed price offered by STGi of $126,566,639.98 is 3.1% below the total IGCE of $130,656,367.99. Based on the overall offered price of $126,566,639.98 and [in] comparison to the IGCE, I have determined that the proposed pricing offered by STGi is reasonable because their proposed price for the base requirement plus all option periods meets the standard for price reasonableness established for this procurement.

AR, Exh. 3, SSD at 627.

Essentially, Valor is arguing that STGi cannot perform at the prices proposed because they are too low. Comments & Supp. Protest at 13 ("If this protest is denied and STGi begins performance, STGi will discover this apparent error in its price proposal and seek to adjust its price, perhaps pursuant to FAR 15.508 or a request for equitable adjustment."). In the context of a fixed-price contract, a claim that a competitor submitted an unreasonably low price--or even that the price is below the cost of performance--is not a valid basis for protest. *TriWest Healthcare Alliance Corp.*, B-415222.3 *et al.*, May 2, 2019, 2019 CPD ¶ 152 at 13-14. An offeror may, in its business judgment, decide to submit a price that is extremely low. *Id.* at 14. In such cases, the agency's determination that the contractor can perform the contract at the offered price is an affirmative determination of responsibility, which this Office will not review except in limited circumstances. *Id.* Hence, we dismiss this allegation.[5]

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[5] Our Office generally does not consider challenges to an affirmative responsibility determination except for protests that allege that definitive responsibility criteria in the solicitation were not met and those that identify evidence raising serious concerns that,

In sum, we find the agency's evaluation and selection decision to be reasonable. The source selection authority (SSA), who also served as the contracting officer, performed a detailed comparative analysis of the proposals and concluded that STGi and Valor provided "the same benefit to the Government" under all non-price evaluation factors, except that Valor's proposal provided an additional benefit to the government under the experience factor. *See* AR, Exh. 3, SSD at 629-642. However, the SSA also concluded that "[b]ecause Valor's offered price is not reasonable, Valor is not eligible for contract award, and no further trade-off analysis regarding the price and non-price evaluation factors is necessary." *Id.* at 644. Even so, the SSA further concluded as follows:

> Even if Valor's offered price had been determined to be reasonable, I have determined that STGi's proposal offers the best value to the Government and that contract award will be made to STGi. I have determined that considering the price and non-price evaluation factors for this procurement, the additional benefit Valor's proposal provides to the Government does not merit the 26% premium Valor has requested over

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in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c). In this regard, Valor does argue that STGi's omission of the rent components from its GSA Form 1364A-1 should have caused the agency to reject STGi's proposal for failing to comply with the solicitation's special standards for responsibility. Comments & Supp. Protest at 14. However, we find no basis for such a conclusion in the solicitation. As relevant to this allegation, the solicitation stated as follows:

> Special Standards of Responsibility. In accordance with FAR 9.104-2, the following special standards of responsibility apply to this procurement: Sub-Lease Terms. Those offerors who fail to meet any special standard of responsibility will not be eligible to receive a contract award.
> 1) Sub Lease Terms- Each proposed site shall allow for the sub-lease of space to the VA for the space occupied by VA staff for the purposes described in the solicitation.

Solicitation at 218. The record shows that the contracting officer confirmed that STGi's proposal complied with this requirement. AR, Exh. 3, SSD at 645 ("STGi provided evidence in the form of a letter of intent for each proposed facility that indicates that they are able to sublet each facility to the VA."); *see also* Exh. 16, June 2020 STGi Revised Technical Proposal at 5, 9, 13, 17, and 21 (indicating "[t]he space available for the VA to sublease" for each facility). Accordingly, we find no basis to sustain this protest allegation.

> the price STGi has offered to perform the same work ($32,975,983 over the life of the contract).

Id. On this record, we find no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel