



# Decision

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**Matter of:** Crystal Clear Maintenance, Inc.

**File:** B-417482

**Date:** June 28, 2019

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## DIGEST

1. Protest that agency improperly allowed protester to modify its quotation in violation of Federal Acquisition Regulation (FAR) part 14 is denied where the solicitation was a request for quotations, which does not fall under the guidance of FAR part 14.
  2. Protest that agency misled and coerced protester to increase its price is denied where record shows that agency's inquiries were reasonable and that the protester exercised its own business judgment in raising its prices.
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## DECISION

Crystal Clear Maintenance, Inc. (CCM), a service-disabled veteran-owned small business (SDVOSB) located in Albuquerque, New Mexico, protests the award of a contract to Raven Operations, LLC, a SDVOSB located in Scottsdale, Arizona, under request for quotations (RFQ) No. 36C78619Q0198, issued by the Department of Veterans Affairs, National Cemetery Administration, for grounds maintenance services at the Santa Fe National Cemetery. The protester asserts that the agency improperly permitted CCM to revise its price and misled it during discussions.

We deny the protest.

## BACKGROUND

The RFQ, posted on February 21, 2019, contemplated the award of a requirements contract with a base period of one year and four option years. Agency Report (AR), Tab 2, Statement of Work (SOW), at 1, 5. The agency posted the solicitation as a

combined synopsis/solicitation pursuant to Federal Acquisition Regulation (FAR) subpart 12.6, "Streamlined Procedures for Evaluation and Solicitation for Commercial Items." AR, Tab 1, RFQ at 2.

The solicitation contemplated that, in accordance with FAR § 13.106-2(b)(3), award would be made to the vendor, whose quotation presented the "best benefit to the government" considering the following factors: price, technical capability, past performance, and SDVOSB verification. RFQ at 3. Vendors were to complete a price schedule, providing unit and extended prices for various categories of service--e.g., weed control, gopher control, and string trimming. AR, Tab 2, SOW, at 1-5.

Three vendors timely submitted quotations in response to the solicitation. Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 3. On March 23, the agency notified CCM of two apparent errors in its quotation. AR, Tab 5, Email Correspondence, at 1. The first error was that the protester had entered unit and extended prices for contract line item number (CLIN) 0001, which did not include estimated quantities and was not intended to be separately priced. Specifically, the contracting officer advised CCM that "[t]here should be no pricing for CLIN 0001 as it is a primary CLIN . . . and pricing is on the subCLINs." *Id.* The second apparent error was that the protester provided a price for string trimming of [DELETED] per job. According to the agency, the contracting officer's concern that this price might be mistaken was informed, in part, by her knowledge of CCM's pricing for this item on the predecessor contract, which was [DELETED] per job. COS/MOL at 8-9.

In response to the agency's inquiry as to whether this second price was a mistake, the protester stated it would "correct the string trimming." AR, Tab 5, Email Correspondence, at 1. The protester also contacted the contracting officer seeking advice on how to adjust its quotation. The contracting officer responded that she was unable to tell the protester how to clarify its quotation. AR, Tab 11, Contracting Officer's Declaration, at 1. On March 25, CCM submitted a revised quotation.

CCM's initial quotation, with the above errors, was priced at \$1,676,000. AR, Tab 4, Initial Price Quotation, at 2. Its revised quotation was priced at \$2,010,105. AR, Tab 7, Final Price Quotation, at 5. Raven, in turn, submitted a quotation price of \$1,972,724. The contracting officer reviewed the quotations and concluded that there were no qualitative differences between CCM and Raven's quotations. AR, Tab 8, Award Decision Document, at 1. As such, Raven was awarded the contract on April 2, 2019, based on its low price.

This protest followed.

## DISCUSSION

As an initial matter, CCM argues that the agency should not have permitted it to revise its price quotation. In support of its argument, the protester cites to FAR part 14, specifically FAR § 14.304 (submission, modification, & withdrawal of bids), which

provides that a bid modification will generally not be considered if it is received after the bid closing time, and FAR § 14.405 (minor informalities or irregularities in bids).

We find no merit to this protest ground. Part 14 of the FAR sets forth the procedures associated with sealed bidding--that is, solicitations issued as invitations for bids (IFBs). The solicitation at issue here is not an IFB; it is an RFQ that contemplates the consideration of factors other than price in the award decision. As such, it is not governed by FAR part 14. The protester's reliance on FAR part 14 is therefore misplaced and this argument is denied.

CCM also contends that the agency's inquiries regarding its string-trimming price misled the vendor into increasing its price significantly, to its competitive detriment. In this regard, the protester's president asserts that upon receiving the email from the agency, he "presumed the bid was too low for [the] items listed" and that as a result, CCM "would be found non-responsible." Protest, Exhibit 6, Affidavit of the Protester's President, at 1. The protester's president contends that to be found responsible, the protester submitted an amended quotation. Id.

During discussions, agencies may not consciously mislead or coerce an offeror into raising its prices. Academy Facilities Management--Advisory Opinion, B-401094.3, May 21, 2009, 2009 CPD ¶ 139 at 6; Eagle Tech., Inc., B-236255, Nov. 16, 1989, 89-2 CPD ¶ 468 at 3-4. We will not find coercion in discussions, however, where an agency in good faith provides accurate information to an offeror about its concern, and provides the offeror with the opportunity to explain or revise its rates or prices. First Info. Tech. Servs., Inc., B-405602, Dec. 1, 2011, 2011 CPD ¶ 261 at 10; First Preston Housing Initiatives, LP, B-293105.2, Oct. 15, 2004, 2004 CPD ¶ 221 at 5; see also, SIMSHIP Corp., B-253655.2, Dec. 2, 1993, 93-2 CPD ¶ 293 at 4-5 (agency did not coerce or mislead protester into raising its price where, based on a concern that the protester had offered unreasonably low prices, the agency advised the protester, during discussions, to review its proposed prices, without stating that the protester was required to raise its prices). This is so even where the offeror uses that information to its ultimate disadvantage.

Here, we find that the agency's communications were not misleading. The agency asked CCM to clarify what it saw as a potential clerical error in the protester's price for string trimming. The protester responded to the inquiry by stating that it would "correct the error," and then increased its string-trimming unit price per job from [DELETED] to [DELETED], implying that the initial price was, in fact, an error. Further, as pointed out by the agency, if the protester had revised its price to address only the two items raised by the contracting officer--that is, if it had only increased its unit price for string trimming and reallocated its pricing for the non-priced CLIN to a priced subCLIN, its revised price would have been \$1,723,205, which is lower than the awardee's price. In its revised price quotation, however, CCM did not simply address the two issues raised by the contracting officer; rather, it also increased its pricing on a number of line items that the contracting officer had not mentioned. We find that this price increase was the result of

CCM's exercise of its business judgment with regard to the pricing of these items, and not improper conduct by the agency.

The protest is denied.

Thomas H. Armstrong  
General Counsel