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Decision

Matter of: Salem Community Hospital dba Salem Regional Medical Center

File: B-418037

Date: December 23, 2019

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DIGEST

1. Protest that the protester's proposal to provide medical services for a federal correctional facility was misevaluated as technically unacceptable is denied where the proposal was at best ambiguous because the protester failed to provide pricing for some of the services that it described in the technical proposal.

2. Protest that the agency improperly refused to evaluate the protester's pricing that used a different pricing methodology from the one expressly required the solicitation is dismissed as an untimely challenge to the terms of the solicitation.

DECISION

Salem Community Hospital, doing business as Salem Regional Medical Center, of Salem, Ohio, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 15B21619R00000001, issued by the Department of Justice, Bureau of Prisons (BOP), for commercial medical services for the Federal Correctional Institution (FCI) Elkton, at Lisbon, Ohio. Salem, the incumbent contractor, argues that BOP misevaluated its proposal as unacceptable.

We deny the protest in part and dismiss it in part.

BACKGROUND

The RFP, issued April 10, 2019, sought proposals to provide comprehensive medical services for a base year, four annual option periods, and a six-month extension of services option, under an indefinite-delivery, indefinite-quantity (IDIQ) fixed-price

requirements contract. RFP at 1, 15 & attach. 3 at 1 (special contract conditions attachment); Agency Report (AR) Memorandum of Law (MOL) at 2. The RFP contained a performance work statement (PWS) that described the agency's requirement in terms of five outputs:

Output No. 1: Provide inpatient facility services, outpatient facility services, and skilled-nursing facility services . . . (Cross-referencing pricing categories 1a, 1b, and 1c.).

Output No. 2: Provide[] professional services . . . (Cross-referencing pricing categories 2a, 2b, 2c1, 2c2, 2c3, and 2c4.).

Output No. 3: Submit properly-priced invoices for services rendered.

Output No. 4: Manage medical record information

Output No. 5: Maintain open avenues of communication

RFP attach. 2 at 2-3.

The RFP stated that "output items 1 and 2 are optional deliverables," but encouraged offerors to submit comprehensive proposals to provide all outputs: "[o]fferors who propose less comprehensive approaches will be evaluated accordingly." Id. at 2.

The PWS went on to further define the outputs. In proposing output No. 1,

[t]he services required to satisfy Output [No.] 1 may include inpatient facility and outpatient facility, including emergency room services. Inpatient visits for non-emergency services shall require private room accommodations with available space for up to three armed or unarmed guards per inmate.

Id. at 3.

For output No. 2, the PWS explained that "[a]s an additional tool to satisfy Output No. 2, professional services may be performed within the confines of FCI Elkton." Id. at 5. The PWS then identified eight "specialty clinics/sessions" that the agency desired through on-site clinics, including cardiologist, neurologist, general surgeon, optometrist, orthopedic surgeon, and physical therapist. Id.

Offerors were to submit a technical proposal, past performance information, and a business proposal, as separate volumes. The technical proposal was to describe the offeror's services and its approach to performing the RFP requirements, including a discussion "in detail [of] the diversity of services" available. RFP attach. 2 at 4. Offerors were also instructed to submit a completed technical proposal summary sheet for each hospital network in the proposal, which required the offeror to fill in information about the type of hospital, the network hierarchy (for example, whether the hospital would be

considered the primary or secondary provider), the hospital's bed capacity, its emergency room trauma level, its accreditation, and its proximity to FCI Elkton, among other things. RFP attach. 8 (hospital summary sheet).

The past performance submission was to list information about three of the offeror's "most recently awarded relevant contracts." RFP attach. 4 at 2. The relevance of the past performance would consider whether the contract involved providing health care to a diverse inmate population; demonstrated establishing and maintaining relationships with a large and diverse number of health care providers or organizations; and included exchanging medical records with multiple health care providers. Id.

Finally, the business proposal was to consist of six documents, one of which was a completed copy of attachment 1 to the RFP. RFP attach. 4 at 3-4.¹ Attachment 1 was identified as a schedule of items and sub-contract certification. RFP attach. 4 at 3 (submission and evaluation of proposals attachment). The attachment itself was labeled as a "contract pricing and sub-contract certification." The main pricing methodology was to be based on a benchmark Medicare rate from which offerors could propose a variance, either as a discount below or a premium above the benchmark. The RFP advised offerors that the resulting rates did not represent participation in the Medicare program; rather, the contract rates would "merely be equated to Medicare rates of reimbursement without reductions for deductibles, copayments, or coinsurance." RFP attach 1, at 1. Beyond that main pricing methodology, certain other services would be priced using "session rates." Id. Pricing for services not covered by Medicare reimbursement methodologies would be negotiated during performance. Id.

Consistent with those instructions, the pricing schedule listed nine categories of services for each contract period and provided spaces for the offeror to insert its pricing information:

- 1a. Inpatient Facility Services: -__Discount or +__ Premium to Medicare Part A
- 1b. Outpatient Facility Services: -__Discount or +__ Premium to Medicare Part B
- 1c. Skilled Nursing Facility Services: -__Discount or +__ Premium to Medicare Part A
- 2a. Inpatient Physician Services: -__Discount or +__ Premium to Medicare Part B
- 2b. Outpatient Physician Services: -__Discount or +__ Premium to Medicare Part B

- 2c. Outpatient Institution Services:
 - 2c1. Other Physicians: -__Discount or +__ Premium to Medicare Part B
 - 2c2. Optometrist: \$_____ per session

¹ The others included a responsibility certification, an explanation of the offeror's management structure, and a copy of the offeror's financial statements. Id.

- 2c3. Physical Therapist: \$_____ per session
2c4. Physical Therapy Assistant: \$_____ per session

NOTE: IF OFFERING A VARIANCE FROM THE BENCHMARK MEDICARE RATE, INSERT APPLICABLE “-/+” PERCENTAGE. IF NO VARIANCE, ENTER “0”.

Id. at 4.

The RFP directed offerors to “adhere strictly to the pricing methodology required by the solicitation.” RFP attach. 4 at 6. A proposal that failed to do so would receive no score for that pricing category:

Offerors who vary their pricing methodology create a situation whereby the Government cannot conduct a comparative evaluation of offers in pricing aspects. Therefore, any Offeror who proposes a pricing methodology in any pricing category which varies from the prescribed (e.g., proposing multiple rates within any category or proposing a differing methodology) will receive no pricing score for each such category.

Id.

Under the technical factor, the RFP identified four equally-weighted subfactors: level of diversity of the services proposed, accreditation status of the facility, proposed enhancements beyond the basic requirements, and driving distance and conditions to the community-based providers. RFP attach. 4, at 6. The past performance evaluation was to consider relevancy, quality, timeliness, cost control, management, small business utilization, and regulatory compliance. Id. at 7. The RFP did not explain the price evaluation in detail, but indicated that pricing in each category would be scored in proportion to their comparison to the best price received in that category, and that the scores would also be weighted in order of importance. Id.

The BOP received seven proposals, including one from Salem. In its technical proposal, Salem explained that it was proposing its 87-bed Salem Community Hospital and certain physicians. The proposal stated Salem’s intent to provide “[i]npatient, outpatient, emergency[,] and skilled-nursing facility services, primarily under . . . Output [No.] 1,” and “[s]pecifically designated professional services under Output [No.] 2.” AR Tab 8, Salem Proposal, at 2. As background information, the proposal described the operations of the hospital as including a 15-bed skilled nursing facility. Id. at 2. On the accompanying proposal summary, Salem stated that it would provide access to 23 of the 27 physician specialties and therapies sought in the RFP. Id. at 24 (technical proposal summary sheet).

With respect to output No. 1, the proposal included a list of inpatient hospital services, among which was “skilled nursing care.” Id. at 5. In listing the hospital’s licensing, the proposal stated that the hospital had a state-issued license for its skilled nursing facility. Id. at 8. The proposal also stated that the hospital was not a designated trauma center

or a tertiary care center, and therefore inmates requiring emergency room trauma care or tertiary care would need to be referred to a facility with those qualifications. Id. at 6, 23 (technical proposal summary sheet).

With respect to output No. 2, Salem's proposal stated that the hospital would provide physician services in the specialties of general surgery, neurology, otolaryngology, gastroenterology, and orthopedics, and listed available physicians for each. Id. at 8-9. The proposal also noted that it did not include providing on-site professional institutional services, so none of the eight on-site clinics sought in the RFP were part of its proposal. Id. at 10.

In its business proposal, Salem listed percentage variances to the corresponding Medicare rates only for three of the categories: 1a (inpatient facility services), 1b (outpatient facility services), and 2b (outpatient physician services). AR Tab 8, Salem Proposal, attach. 1, at 4-6. As pricing for category 1c (skilled nursing facility services), Salem's proposal did not list a discount, premium, or zero amount; instead, Salem left both the discount and premium lines blank, and inserted the following text immediately below the skilled nursing facility services pricing line for each period:

Skilled: **\$(DELETED)** per day plus standard charges for blood transfusions and medications

Convenience days: **\$(DELETED)** per day plus standard charges for blood transfusions and medications

Id.

On the lines for pricing categories 2a, 2c1, 2c2, 2c3, and 2c4, Salem again did not provide any pricing; instead it left the respective lines blank for each performance period. Id.

In evaluating Salem's technical proposal, the BOP's technical evaluators noted that it included listed medical specialties, but did not offer any of the on-site institution services the RFP requested. Additionally, among the weaknesses they identified were Salem's omission of skilled nursing facility services, and its failure to identify physical or occupational therapists, respiratory therapists, or speech therapists to provide the respective specialty services. AR Tab 10, Technical Evaluation, at 2. The evaluators also noted that Salem's proposal had positive elements: proximity to FCI Elkton, accreditation status, and proposed enhancements. Id. at 1-2. Overall, the evaluators concluded that Salem's proposed approach would meet only a limited amount of the inmate medical needs at FCI Elkton, and the positive attributes did not overcome the inadequacies in Salem's proposal, so they assessed a technical rating of red/unsatisfactory. Id. at 2.

In evaluating Salem's past performance, the contracting officer noted the firm's performance as the incumbent contractor since 1997, and that it had consistently received high ratings and "overwhelmingly positive" comments. AR Tab 12, Past Performance Evaluation Memorandum, at 7-8. Based on that, the contracting officer

expressed confidence that Salem would “successfully meet the medical requirements of FCI Elkton,” and a very low risk of performance issues. Id. at 8. However, the evaluation also noted that the incumbent contract was the only past performance record for Salem in the contractor performance and reporting system (CPARS). Id. The contracting officer stated that the lack of other CPARS records made it “problematic to determine a comprehensive overall rating,” and so Salem’s past performance was rated “Very Good +.” Id.; AR MOL at 4-5.

As indicated in the RFP, the price evaluation used a “weighted point system,” in which a score of 100 was assigned to an offeror that proposed zero deviation from the specified Medicare rates for the six categories of services that used that pricing methodology. Contracting Officer’s Statement (COS) at 4. For an offeror that proposed a discount below the Medicare rate, the proposed discount percentage would be added to 100 to determine the score, up to a maximum of 110. Similarly, for an offeror that proposed a premium above the Medicare rate, the proposal premium percentage would be deducted from 100.² Id. The scores for each of the six categories of services for each performance period were then weighted according to the agency’s independent estimate, and that calculation resulted in a total price score for each offeror. Id.

In evaluating Salem’s pricing, the BOP concluded that the firm’s pricing for categories 1c, 2a, 2c1, 2c2, 2c3, and 2c4 did not comply with the required pricing methodology (for 1c the pricing used a different methodology, and for the remainder, the pricing lines had been left blank). AR Tab 9, Price Evaluation Memorandum, at 3-5. Therefore those lines were all scored as zero points. Id. at 20-22; AR MOL at 5-6. After the weighting calculation, Salem’s price score was 76.51 points. AR Tab 9, Price Evaluation Memorandum, at 22. The total pricing scores for the other offerors ranged from 103.1 points to 88.6 points. AR MOL at 6.

The overall evaluation ratings and scores, in ranked order, were as follows:

Offeror	Technical Rating	Past Performance Rating	Price Score
Offeror A	Green/Satisfactory -	Very Good	103.10
Offeror B	Green/Satisfactory	Very Good	99.48
Offeror C	Green/Satisfactory +	Very Good	93.45
Offeror D	Green/Satisfactory +	Very Good	88.60
Offeror E	Green/Satisfactory	Very Good	81.24
Offeror F	Yellow/Marginal	Very Good	77.76
Salem	Red/Unsatisfactory	Very Good +	76.51

AR Tab 13, Competitive Range Determination Memorandum, at 1.

² For example, an offeror that proposed zero deviation for inpatient facility services for the base period would receive a score of 100 for that category and performance period. Similarly, a discount of 6 percent would yield a score of 106, while a premium of 4 percent would yield a score of 96. COS at 4.

The contracting officer reviewed the evaluations of the three lowest-rated offerors and decided to exclude each from the competitive range. For Salem, the contracting officer noted that the firm proposed a single facility located 15 miles from FCI Elkton, but that the scope of Salem's offered services made it very likely that the agency would face a need to obtain medical care at other facilities. Id. at 2. The contracting officer also noted that Salem's evaluated price was scored seventh-lowest and, combined with the low technical rating, justified its exclusion from the competitive range. Id. Following notification of the exclusion of its proposal from the competitive range and a debriefing, Salem filed this protest.

DISCUSSION

Salem challenges the exclusion of its proposal from the competitive range as being based on an unreasonable evaluation.³ As explained below, our review of the record supports the reasonableness of BOP's evaluation, and the resulting decision to exclude Salem's proposal from the competitive range.

Technical Evaluation Challenges

Salem argues that its proposal met or exceeded all of the evaluation criteria, but that BOP evaluated its proposal as red/unsatisfactory by erroneously concluding that it had not proposed skilled nursing facility services or qualified medical specialists able to provide physical/occupational therapy, sleep services, and speech therapy services. Protest at 3. Salem also contends that BOP improperly downgraded its technical proposal because it offered only one hospital network and did not propose on-site clinics at FCI Elkton, neither of which were identified as mandatory in the RFP. Id. at 5.

The agency contends that its technical evaluation was reasonable and consistent with the RFP evaluation criteria. The BOP's technical evaluators noted that Salem included listed medical specialties, but did not offer any of the on-site institution services the RFP requested. The contracting officer also explains that in assessing Salem's proposal under the diversity of services subfactor, the agency concluded that the single 87-bed hospital would not be adequate to meet the needs of almost 2,400 inmates at FCI Elkton, and that this aspect outweighed the proposal's advantages under the other three subfactors. COS at 6. Additionally, the contracting officer considered that Salem's proposal did not include any of the on-site clinics that the RFP indicated the agency desired. Id. Together, these two aspects were sufficient for the agency to assess rating of unacceptable to Salem's proposal under the diversity of services subfactor. Id. at 7. While the agency acknowledges that Salem's proposal had strengths in the other three technical subfactors, the contracting officer explains that the

³ Salem also challenged the evaluation of its past performance, arguing that its performance as the incumbent contractor should have been rated excellent, rather than "very good +." The record provides no basis to question the BOP evaluation of Salem's past performance, however. Salem's evaluation was superior to all of its competitors, but the agency reasonably recognized that the record was limited.

unacceptable rating under the diversity of services subfactor provided a reasonable basis for the agency to rate Salem's proposal red/unsatisfactory under the technical factor. Id. at 8.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, because the agency is responsible for defining its needs and the best method for accommodating them. Cherokee Nation Tech. Sols., LLC, B-411140, May 22, 2015, 2015 CPD ¶ 170 at 5. In reviewing a challenge to the agency's evaluation, our Office will not reevaluate proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. at 5-6. A protester's disagreement with an agency's evaluation judgment is not sufficient to establish that the agency acted unreasonably. Id.

In addition, an offeror is responsible for submitting an adequately written proposal that demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. The technical evaluation is dependent on the information furnished, so an offeror that fails to submit an adequately written proposal runs the risk of having its proposal downgraded. NikSoft Sys. Corp., B-415716.28, B-415716.33, July 12, 2019, 2019 CPD ¶ 276 at 4.

Our review of the record supports the reasonableness of the BOP's technical evaluation. Although Salem argues that BOP misevaluated its proposal as unacceptable, our review shows that Salem's proposal was at least ambiguous regarding the scope of services that the hospital would provide. Notwithstanding its listing of 23 services and specialties at the hospital, the proposal created ambiguity about whether those were actually being offered when Salem provided noncompliant pricing for its skilled nursing facility, failed to price all inpatient physician services and four categories of outpatient institution services, and omitted identities for the specialist(s) that would provide physical/occupational therapy, respiratory/sleep therapy, and speech therapy. An agency can reasonably conclude that a proposal that provides ambiguity about whether the offeror will meet material requirements may be rejected as unacceptable. See Potomac Elec. Corp., B-311060, Apr. 2, 2008, 2008 CPD ¶ 63 at 3 (proposal containing cover letter information that conflicted with offer rendered proposal ambiguous and thus, unacceptable). Accordingly we deny Salem's challenges to the evaluation of its technical approach.

Pricing Arguments

The protest also argued that Salem has saved BOP money in the past, and that the agency should have provided more information after award about the pricing evaluation. COS at 7. After considering both parties' arguments about the sufficiency of this ground of protest, we dismissed it because Salem had not provided a valid legal basis to challenge the pricing evaluation. Electronic Protest Docketing System Dkt. No. 17, GAO Notice of Summary of Conference Call on Dismissal Request, Oct. 22, 2019, at 1. A protester's contention that an agency has provided an inadequate debriefing does not

state a valid basis of protest. Ideal Sol., LLC, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 2 n.2.

In its comments on the agency report, Salem raised a new argument that BOP had unreasonably failed to consider its pricing for skilled nursing services (in addition to repeating its complaint about the adequacy of the debriefing). Protester's Comments at 1, 4-5. Salem did not contend that its skilled nursing facility pricing complied with the RFP methodology, but instead argued that its alternative pricing methodology was permitted by a 2007 amendment to its incumbent contract, and therefore its alternative pricing should have been evaluated. Id. at 4. Salem's comments raise an untimely challenge to the terms of the RFP that, as quoted above, expressly required the skilled nursing facility category (among others) to be priced as a percentage variance to the specified Medicare rate. The RFP expressly precluded pricing by any alternate methodology. To be timely, any challenge to those express RFP terms had to be filed no later than the closing date for submission of proposals, on June 12. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1). Accordingly, we dismiss Salem's challenges to the pricing evaluation in its November 7 comments on the agency report.

CONCLUSION

Our review of the record supports the BOP's evaluation judgment that Salem's proposal did not offer an acceptable level of diversity of services to meet the agency's needs, principally because Salem provided incomplete information about the services that it would provide under the terms of the RFP. The contracting officer properly accounted for Salem's highly rated past performance as the incumbent. Taken as a whole, along with Salem's significantly lower score under the price factor, we have no basis to question the contracting officer's conclusion that Salem's proposal was not among the most highly rated. Salem has not shown that the elimination of its proposal from the competitive range was improper.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel