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Decision

Matter of: Veterans Medical Supply, Inc.

File: B-418019.6

Date: January 29, 2021

John M. Manfredonia, Esq., Manfredonia Law Offices, LLC, for the protester.
Jennifer Claypool, Esq. and Maura C. Brown, Esq., Department of Veterans Affairs, for the agency.
Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's corrective action is denied where the record shows that the agency's decision to reopen discussions and seek revised price proposals as part of its corrective action was reasonable and within the agency's broad discretion in this area.

DECISION

Veterans Medical Supply, Inc., of St. Petersburg, Florida, protests the corrective action taken by the Department of Veterans Affairs (VA) in response to a prior protest with our Office under request for proposals (RFP) No. 36C79119R0009, for positive airway pressure devices, accessories, and replacement parts. Veterans Medical Supply maintains that allowing the submission of revised price proposals as part of the agency's corrective action is improper.

We deny the protest.

BACKGROUND

The agency issued the RFP on November 7, 2019, seeking proposals for various positive airway pressure (PAP) devices, and associated accessories and replacement parts, including facial interfaces and mask liners, to supply VA medical facilities. B-418019.4, Protest, attach. 1, RFP at 6. The RFP provided for the award of multiple fixed-price indefinite-delivery, indefinite-quantity (IDIQ) contracts on a lowest-priced, technically acceptable basis, with a 1-year base period and four 1-year option periods. *Id.* at 6, 88.

The RFP identified the categories of products sought by contract line item numbers (CLIN). *Id.* at 7. The RFP contained seven CLINs for different types of PAP devices, five CLINs for different types of facial interfaces, and one CLIN for mask liners. *Id.* The RFP anticipated that the agency would award contracts under each CLIN product category for different makes and models, but specified that the agency would make only one award for each particular make and model of PAP device, PAP accessory, or replacement part. *Id.* at 6-7.

On or before the December 27, 2019 closing date, the agency received proposals from eight offerors, including Veterans Medical Supply. Contracting Officer's Statement (COS) at 3. After evaluating the proposals, the agency awarded IDIQ contracts to seven offerors, including the protester. *Id.*; *see also* Agency Report (AR), Tab 7, Source Selection Memorandum. The agency provided each offeror an award notice, informing it of the CLINs it had been awarded; however, the agency did not disclose any awardee's price to other offerors. COS at 3, Protest at 4.

Veterans Medical Supply subsequently filed a protest with our Office, arguing that when the agency made its award decisions it did so based on Veterans Medical Supply's initial price proposal, instead of its final, revised price proposal. *See Veterans Medical Supply, Inc.*, B-418019.4, Oct. 21, 2020 (unpublished decision). Another awardee, Medical Place, Inc., also filed a protest with our Office, arguing that the evaluation and award decision were unreasonable and inconsistent with the terms of the solicitation. *See Medical Place, Inc.*, B-418019.5, October 21, 2020 (unpublished decision). On October 15, the agency notified our Office that it intended to take the following actions in response to the protests: terminating the awards made under the RFP, reopening discussions with all offerors, requesting final proposal revisions, conducting a new evaluation, and making new award decisions. *Id.*; *Veterans Medical Supply, Inc.*, B-418019.4, Oct. 21, 2020 (unpublished decision). Based on the agency's intended corrective action, we dismissed the protests as academic. *Id.*

On October 26, the agency informed the protester that it was reopening discussions and limiting proposal revisions to price only. AR, Tab 16, Veterans Medical Supply Discussion Letter. That same date, Veterans Medical Supply filed this protest objecting to the scope of the agency's corrective action.

DISCUSSION

The protester argues that the agency's corrective action is unreasonable because submission of new price proposals is not required to address the procurement errors identified by the agency. Comments at 3-6. Veterans Medical Supply maintains that the agency could address all the identified issues by simply conducting a new evaluation.¹ *Id.*

¹ The protester also argues in the alternative that, if new price proposals are required, the agency should limit them to the certain CLINs for which the agency failed to provide

As a general rule, agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition. *MSC Indus. Direct Co., Inc.*, B-411533.2, B-411533.4, Oct. 9, 2015, 2015 CPD ¶ 316 at 5; *Zegler, LLC*, B-410877, B-410983, Mar. 4, 2015, 2015 CPD ¶ 168 at 3. The details of implementing corrective action are within the sound discretion and judgment of the contracting agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. *DGC Int'l*, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3; *Northrop Grumman Info. Tech., Inc.*, B-404263.6, Mar. 1, 2011, 2011 CPD ¶ 65 at 3. Where an agency has reasonable concerns that there were errors in the procurement, corrective action may appropriately include reopening discussions and requesting revised proposals before reevaluating. See, e.g., *DGC Int'l*, *supra* at 3; *Consortium HSG Technischer Service GmbH and GeBe Gebäude-und Betriebstechnik GmbH Südwest Co., Management KG*, B-292699.4, Feb. 24, 2004, 2004 CPD ¶ 44 at 3.

Here, the agency reports that during its review of the protests following initial award under this solicitation, the agency concluded that the original contracting officer and contract specialists “made multiple mistakes in handling final proposal[s],” specifically related to the offerors’ final price proposals. AR, Tab 6, Contracting Officer’s Decl. at 1-2. As a result of these errors, the agency decided to replace the original contracting officer and contract specialists. See *Id.*

The new contracting officer noted that an entire group of sub-CLINs was not awarded, that the lowest-priced, technically acceptable evaluation process was not consistently applied, and that not all offerors were informed of weaknesses in their price proposals during discussions. *Id.* at 2. Based on his review of the evaluation record relevant to the protests, the new contracting officer was concerned that there likely were other errors related to the evaluation of other offers. *Id.* Based on the above, the agency explains that it needed to request new price proposals “to be fair to all offerors and ensure no additional errors or missing pricing existed.” COS at 5-6.

In our view, the corrective action taken here is well within the broad discretion afforded to contracting agencies. Because it is not clear to the agency whether it properly conducted price discussions or evaluated final price proposals, the agency had a reasonable basis to seek revised price proposals from the offerors, including the protester.

The protester also argues that, given the posture of the procurement, the agency’s decision to request revised price proposals causes competitive harm and raises procurement integrity issues. Protest at 4; Comments at 7-10. In this regard, Veterans Medical Supply argues that because each offeror was notified of which products it was

meaningful discussions. Comments at 8. For the reasons set forth below, we find no basis to sustain the protest on this ground.

and was not awarded, each offeror has “inside information” of which proposed prices it needs to lower to be competitive for CLINs it was not previously awarded.² Protest at 4. The agency responds that the corrective action is reasonable and does not violate the integrity of the procurement because prices have not been publicly disclosed. Memorandum of Law at 5.

Where the corrective action taken by an agency is otherwise unobjectionable, a request for revised price proposals is not improper merely because the awardee’s price has been exposed. *McKean Defense Group--Information Technology, LLC*, B-401702.2, Jan. 11, 2010, 2010 CPD ¶ 257 at 3. Our Office has recognized a limited exception to that rule;³ as a threshold issue, however, this exception does not apply when the awardee’s price has not been disclosed to other offerors. See *Id.* at 2-3. Here, as noted above, the awardees’ prices have not been disclosed. COS at 3. Accordingly, these arguments do not provide a basis to sustain the protest.⁴

In sum, we find that the agency’s decision to address its concerns with the procurement, found after Veterans Medical Supply’s and Medical Place’s initial protests, was reasonable, and that the agency was within its discretion to request revised price proposals from the offerors. We find nothing objectionable about the agency’s

² Veterans Medical Supply also complains that because the agency mistakenly evaluated its initial price proposal, it was not given the kind of “inside information” that the other offerors received. Protest at 4. The protester does not explain why the information it received, informing the protester which of its submitted prices were each the lowest for a given proposed product and which of its submitted prices were not, is not similar information to that given to the other offerors.

³ Our Office has recognized a limited exception to the agency’s discretion to seek revised price proposals where the record establishes that there was no impropriety in the original evaluation and award, or where an actual impropriety did not result in any prejudice to offerors; in these circumstances, reopening the competition after prices have been disclosed may not provide any benefit to the procurement system that would justify compromising the offerors’ competitive positions. *Security Consultants Group, Inc.*, B-293344.2, Mar. 19, 2004, 2004 CPD ¶ 53 at 2 (*citing Hawaii Int’l Movers, Inc.*, B-248131, Aug. 3, 1992, 92-2 CPD ¶ 67 at 6, *recon. denied, Gunn Van Lines; Dept. of the Navy--Recon.*, B-248131.2, B-248131.4, Nov. 10, 1992, 92-2 CPD ¶ 336).

⁴ We similarly disagree with the protester’s contention that the agency’s request for proposed price revisions here presents procurement integrity issues. In support of its arguments the protester relies on our decision in *Peraton Inc.*, B-416916.8 *et al.*, Aug. 3, 2020, 2020 CPD ¶ 248 at 8, but that reliance is misplaced. Protest at 4; Comments at 8. In that decision we recognized that permitting price revisions when the awardee’s price has been disclosed may have implications for procurement integrity, and is not required in some cases. Here, unlike *Peraton*, the awardee’s prices have not been disclosed, and even if they had been disclosed, the protester has not otherwise provided a basis to question the integrity of the procurement.

determination that the submission of revised price proposals would cure errors in the procurement process.

The protest is denied.

Thomas H. Armstrong
General Counsel