



Decision

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Matter of: Virgo Medical Services, Inc.

File: B-420462.3; B-420462.4

Date: August 5, 2022

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DIGEST

Protest challenging agency's evaluation of awardee's experience and past performance is denied where evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Virgo Medical Services, Inc., a small business located in East Orange, New Jersey, protests the award of a contract to HVM Associates LLC, doing business as, AmbiCab Medical Transportation, also of East Orange, New Jersey, under request for quotations (RFQ) No. 36C24222Q0077, issued by the Department of Veterans Affairs (VA), for ambulette and wheelchair transport services. Virgo challenges the evaluation of the awardee's technical quotation and past performance, and the selection decision.

We deny the protest.

BACKGROUND

The RFQ, issued on December 14, 2021, contemplated the award of a single fixed-priced requirements contract for ambulette and wheelchair transport services for veterans served by the VA New Jersey Healthcare System (NJHCS). Agency Report (AR), Tab 3, RFQ at 1, 56. The NJHCS, which includes 11 VA facilities, receives more than 350 requests each month for patient transport services to deliver patients to their appointments for life sustaining services such as cancer treatment and dialysis. Memorandum of Law (MOL) at 1-2.

The solicitation was issued using the commercial item and simplified acquisition procedures in parts 12 and 13 of the Federal Acquisition Regulation, with services to be provided for a 1-year base period and four 1-year option periods. RFQ at 1, 17-19. Award was to be made to the vendor whose quotation conformed to the solicitation and was “most advantageous to the Government, price and other factors considered.”¹ AR, Tab 4, RFQ, amend. 0004 at 2. The solicitation listed three factors the agency would use to evaluate quotations: technical, past performance, and price. *Id.* at 3-4. The technical factor included three subfactors: management, capability, and experience. *Id.* at 3.

Relevant to this protest, within the technical factor, the capability subfactor required vendors to provide information and documentation, such as, a list of available vehicles (including make, model, and year) with vehicle identification number and location of hub/main office. *Id.* at 3. Vendors were also asked to describe how they would provide coverage if the VA’s needs during performance were to exceed the contractor’s fleet. *Id.* Other required information included insurance certificates, business licenses, and inspection reports for the vehicles. *Id.*

Under the experience subfactor, vendors were required to provide a minimum of three references for contracts of similar scope, size and complexity with the company name/address, point of contact, dates of performance, aggregate award amount, and contract number. *Id.* at 4.

For the past performance factor, the solicitation provided that the VA would “conduct a performance risk assessment based upon the past performance of the [vendor] as it relates to the probability of successful accomplishment of the work required by the solicitation.” *Id.* at 5. The RFQ explained that the VA “may use information available in its own files, from electronic databases such as the Past Performance Retrieval System (PPIRS), CPARS [Contractor Performance Assessment Reporting System], DCMA [Defense Contract Management Agency] or from any other source it deems appropriate.” *Id.* The RFQ instructed vendors to identify references for no more than three relevant contracts performed within the last three years. *Id.* The solicitation defined “relevant” to mean “[p]resent/past performance effort involved essentially the same, or much the same, magnitude of effort and complexities this solicitation requires.” *Id.*

GAO Protests

On January 14, 2022, Virgo filed a protest with our Office challenging certain solicitation terms. The agency decided to take corrective action to address perceived ambiguities in the RFQ, and as a result, we dismissed the protest as academic. *Virgo Medical*

¹ The solicitation did not provide any further indication as to whether the award decision was to include a best-value tradeoff analysis or be based on the lowest-priced technically acceptable quotation. The RFQ also did not provide any information regarding how the agency would rate quotations under the technical factors/subfactors and did not indicate that the agency would assign adjectival ratings or rank quotations.

Services, Inc., B-420462, Jan. 27, 2022 (unpublished decision). As part of the corrective action, the VA issued RFQ amendment 0003, which provided for the submission of quotations by February 24, 2022. AR, Tab 4, RFQ, amend. 0003; Contracting Officer's Statement (COS) at 1.

On February, 24, 2022, Virgo filed a second pre-award protest with our Office, raising additional allegations that the solicitation contained ambiguities.² The agency again decided to take corrective action in response to the protest, and we dismissed the protest as academic. *Virgo Medical Services, Inc.*, B-420462.2, Mar. 10, 2022 (unpublished decision). The VA issued RFQ amendment 0004 and established a due date for the submission of final quotations of March 25, 2022. COS at 2.

The VA's current contract for ambulette transport services expired on March 31, 2022. *Id.* On April 1, “[d]ue to time constraints” and “the urgency for required services,” the contracting officer awarded a short-term contract for services to Life Tech, Inc. on a sole-source basis. *Id.* On April 4, Virgo filed two protests with our Office arguing that the sole-source award was improper and was the result of a lack of advance planning on the part of the contracting agency. *Id.* In response, the agency decided to take corrective action by terminating the sole-source contract awarded to Life Tech, Inc., and proceeding with award of a contract for the long-term requirement under the solicitation at issue in this protest. Notice of Corrective Action, B-420656, B-420656.2 at 1-2. As a result, we dismissed the protests as academic. *Virgo Medical Services, Inc.*, B-420656, B-420656.2, Apr. 21, 2022 (unpublished decision).

VA Evaluation and Award

The agency received quotations from two vendors, Virgo and AmbiCab, by the March 25 deadline. COS at 2. After evaluating the quotations, the VA selected AmbiCab for award of the contract. AR, Tab 13, Award Decision at 4. The contracting officer found that both vendors' technical quotations were “complete” and “acceptable.” *Id.* She found that Ambicab's past performance offered lower risk and was more advantageous to the VA than Virgo's. *Id.* With regard to price, the awardee quoted a total price of \$4,579,027, and Virgo quoted a total price of \$5,106,400. *Id.* Ultimately,

² Prior to the February 24 deadline for the submission of quotations, Virgo also notified the VA of allegations that its “former employee and a VA employee improperly disclosed procurement information to outside parties.” COS at 1. As a result of these allegations, the VA “conducted an investigation,” which “was reviewed and confirmed by the Division Chief,” with the conclusion that “none of the documentation provided by Virgo supported VA employee misconduct that impacted the current procurement.” *Id.* at 2.

the contracting officer concluded that AmbiCab's offer was the most advantageous to the government. *Id.*

The agency notified Virgo on April 22, 2022, of the award decision. COS at 3. After receiving a brief explanation of the award from the agency on that same date, Virgo filed this protest with our Office.

DISCUSSION

Virgo challenges the agency's evaluation of the awardee's technical quotation and past performance, and the award decision. Virgo alleges that the awardee's quotation failed to meet a material solicitation requirement for the experience subfactor and, as a result, should have been found unacceptable. The protester also contends that the agency's evaluation of the awardee's past performance was unreasonable because the awardee's quotation failed to provide sufficient information to demonstrate that AmbiCab had performed "relevant contracts" as required by the solicitation. The protester also challenges the award decision, asserting that the VA failed to meaningfully consider the qualitative differences between Virgo's quotation and the awardee's in selecting the most advantageous vendor.

As discussed in detail below, the record reflects that the contracting officer evaluated the vendors' technical quotations for acceptability, qualitatively evaluated past performance, and based award on a comparative assessment of price and past performance to determine which quotation was most advantageous to the government. We note that the solicitation's evaluation criteria did not expressly indicate how the vendors' quotations would be compared. Given this readily apparent ambiguity in the solicitation, which was never challenged, and the flexibilities afforded the agency under the simplified acquisition procedures in FAR part 13, we find no basis to conclude that the agency's approach was inconsistent with the solicitation or applicable regulations.³ See *Fitnet Purchasing Alliance*, B-410263, Nov. 26, 2013, 2014 CPD ¶ 344 at 4 (explaining that a patent ambiguity in the solicitation regarding the agency's intended basis for award must be protested prior to the deadline for receipt for quotations).

Evaluation of Experience Subfactor

Virgo challenges the agency's evaluation of the awardee's quotation under the experience subfactor of the technical factor. The protester asserts that "AmbiCab's [quotation] was nonresponsive to a material requirement of the [s]olicitation" because it failed to provide three references for contracts showing "experience providing ambulette/wheelchair transportation services" that were similar in "size, scope, and magnitude" to the instant contract. Supp. Comments at 5. The protester alleges that the VA did not have sufficient information to assess whether any of the contracts

³ Although we do not address all of the protester's arguments in this decision, we have considered all of them, and find no basis to sustain the protest.

performed by AmbiCab were “similar in size” to the instant contract because AmbiCab did not provide the “aggregate award amount” for its three referenced contracts. *Id.*

The simplified acquisition procedures established under FAR part 13 are designed to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors. When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. *SSI Technology, Inc.*, B-412765.2, July 13, 2016, 2016 CPD ¶ 184 at 3; *Emergency Vehicle Installations Corp.*, B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4. In reviewing a protest of an allegedly improper simplified acquisition evaluation, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. *DOER Marine*, B-295087, Dec. 21, 2004, 2004 CPD ¶ 252 at 3. The fact that the protester disagrees with the agency’s evaluation, by itself, is not sufficient to sustain the protest. *DeWitt & Co., Inc.*, B-417194, Mar. 25, 2019, 2019 CPD ¶ 126 at 3.

As noted above, the RFQ required vendors to demonstrate experience providing ambulette/wheelchair transportation services by identifying three references for contracts of similar scope, size and complexity. RFQ, amend. 0004 at 11. The services must have been ongoing or completed within three years from the issuance of the solicitation. *Id.* For each contract, vendors were required to provide the following information: company name and address; company point of contact name, telephone number and e-mail address; dates of contract performance; aggregate award amount; and contract number. *Id.*

AmbiCab’s quotation identified contracts with three private companies (Complete Care Summit Ridge Center, ModivCare, and Alaris Health). AR, Tab 6, AmbiCab Quotation at 12. For each contract identified, AmbiCab indicated that the experience was ongoing and included the company name and address, point of contact information, and dates of performance; the award amount was listed as “N/A.” *Id.* In comparison, the protester provided experience for two VA contracts, with all required information included, and experience at one private company with the aggregate award amount listed as “N/A,” like AmbiCab’s quotation. AR, Tab 5, Virgo Quotation at 39.

The record reflects that the contracting officer evaluated AmbiCab’s quotation under the experience subfactor for completeness, and found that AmbiCab’s references demonstrated sufficient “experience providing ambulette transports from 2000 to the present.” AR, Tab 13, Award Decision at 3. The contracting officer explains that using the information provided in AmbiCab’s quotation, she was able to contact all of AmbiCab’s references and through these contacts confirm that AmbiCab had “the required experience.” *Id.* Similarly, the contracting officer evaluated Virgo’s quotation under the experience subfactor for completeness, and found that Virgo’s references demonstrated sufficient “experience performing ambulette transports from 1999 to the

present.” *Id.* at 3-4. The contracting officer explains that she contacted Virgo’s non-VA contract reference and was able to confirm its experience for this contract. COS at 2.

While the protester contends that AmbiCab’s failure to include in its quotation the requested price information for its experience references rendered the agency unable to assess the similarity of AmbiCab’s experience to the government’s requirements, the record indicates that this is not the case. Using the information provided in AmbiCab’s quotation, the agency was in fact able to contact the references and confirm that AmbiCab had the relevant experience necessary to be found acceptable. Accordingly, we fail to see how the alleged error had a material impact on the agency’s evaluation.

Further, although the protester alleges that AmbiCab’s quotation failed to provide any evidence that the contracts it identified for experience were for ambulette/wheelchair transport services, the solicitation did not ask that vendors provide this information in their quotations. RFQ, amend. 0004 at 11. The structure of the solicitation, on its face, was not designed for vendors to describe the similarity of their experience in their quotations. *Id.* Rather, the RFQ sought, for each reference, only general contract information (company name, contract number, contract value, period of performance, and a point of contact) and a way for the contracting officer to reach each contract’s point of contact. *Id.* As explained above, the contracting officer was able to contact AmbiCab’s references and confirm that it had acceptable experience.

To the extent the protester contends that there is nothing in the record to support the agency’s conclusion that AmbiCab provided references for similar services, the protester itself has provided no information that would call into question the reasonableness of that conclusion, despite being provided with the contents of AmbiCab’s quotation. Given the minimal documentation requirements associated with FAR part 13 and the protester’s failure to make a supported assertion that AmbiCab’s referenced contracts were not similar to the instant requirement in size, scope, and complexity, we find that the protester’s complaints pertaining to AmbiCab’s experience do not provide a basis for sustaining the protest. FAR 13.106-3(b) (“Keep documentation to a minimum.”). This protest ground is denied.

Past Performance

Virgo argues that the agency’s evaluation of the awardee’s past performance was unreasonable because two of AmbiCab’s three past performance references were not “relevant contracts” as required by the solicitation. The agency responds that it reasonably concluded the awardee had performed relevant contracts for services similar to the instant contract.

As previously noted, the RFQ provided that the VA would conduct a performance risk assessment. RFQ, amend. 0004 at 12. The solicitation asked vendors to identify references for no more than three relevant contracts performed within the last three years, and defined “relevant” to mean “[p]resent/past performance effort involved essentially the same, or much the same, magnitude of effort and complexities this solicitation requires.” *Id.* The RFQ also provided that the VA might use information

available in its own files, from electronic databases, or from any other source it deemed appropriate. *Id.*

The awardee provided three references, one for ambulette/wheelchair transportation services and two for ambulance transportation services. AR, Tab 6, AmbiCab Quotation at 12. One of the references for ambulance transportation services is AmbiCab's current contract with the VA's NJHCS for basic life support and specialty care transport ambulance transportation services. *Id.* The contracting officer contacted the references and reviewed the awardee's past performance. The award decision discussed two of the past performance references, including AmbiCab's performance on its current VA contract, and noted that the references provided positive comments on such matters as AmbiCab's willingness to accommodate the VA's needs, responsive management, and a primary goal of patient safety. AR, Tab 13, Award Decision at 4.

The protester contends that it was improper for the agency to find AmbiCab's contracts for ambulance transportation services "relevant" because the instant contract is for ambulette/wheelchair transportation services. In the protester's view, ambulance transportation services do not fall within the definition of "relevant" past performance provided by the RFQ, *i.e.*, services involving "essentially the same, or much the same, magnitude of effort and complexities this solicitation requires." RFQ, amend. 0004 at 12.

In response to the protest, the contracting officer explains that she viewed "Ambicab's past performance related to ambulance transports [as] relevant" because "ambulance transports require more training and are more complex" than ambulette/wheelchair transportation services. Supp. COS at 1. In this regard, the contracting officer explains that the services provided under AmbiCab's current VA contract "are relevant to the current procurement because the services are similar but more complex than those required for ambulette or wheelchair transportation." *Id.* The contracting officer notes, for example, that, "[i]n its current VA contract, Ambicab must provide basic life support . . . that includes the necessary equipment to render basic emergency medical care and services" and "specialty care transport . . . designed for individuals who need specialized medical monitoring and intervention by a critical care transport nurse during the transport[.]" *Id.*

Based on our review, we find nothing unreasonable regarding the agency's evaluation. As noted previously, to be relevant, the solicitation required only that the past performance involve essentially the same, or much the same, magnitude of effort and complexities required by this solicitation. RFQ, amend. 0004 at 12. The contracting officer explained why she found the ambulance transportation services similar to the solicitation's ambulette services, and therefore relevant. To the extent the protester maintains that the agency's evaluation was improper because it should have found that "ambulette services are substantially different from ambulance services," Supp. Comments at 8, the protester's disagreement with the agency's evaluation, without more, is insufficient to demonstrate that the evaluation was unreasonable or failed to

comply with the solicitation's requirements. *DeWitt & Co., supra*. On this record, we find no basis to sustain the protest.

Award Decision

Virgo also challenges the agency's award decision, arguing that the contracting officer failed to conduct a comparative assessment of quotations under the technical capability subfactor. The protester maintains that if Virgo's and AmbiCab's quotations had been properly compared under the technical capability factor, Virgo's proposal would have been viewed as superior. *Id.* As discussed below, we find the protester's argument provides no basis to sustain the protest.

As relevant here, under the technical capability subfactor, the solicitation required that vendors identify their vehicles and provide information demonstrating they meet specified requirements.⁴ The record reflects that the contracting officer found both quotations met all of the solicitation's requirements and found both quotations technically acceptable. *Id.*

As noted above, the solicitation's evaluation criteria did not expressly indicate how the vendors' quotations would be evaluated or compared. Given the lack of specificity in the RFQ and the flexibilities afforded the agency in conducting a simplified acquisition in FAR part 13, we find nothing in the agency's award decision that is inconsistent with the solicitation or applicable regulations.

The award decision reflects that the contracting officer based the award on a "comparative evaluation in accordance with FAR 13.106-2(b)(3)." AR, Tab 13, Award Decision at 1. This provision provides that quotations "shall be evaluated on the basis established in the solicitation" and that contracting officers "have broad discretion in fashioning suitable evaluation procedures." FAR subpart 13.106-2. It also provides that if using price and other factors, "scoring quotations" is "not required," and that "[c]ontracting officers may conduct comparative evaluations of offers." FAR 13.106-2(b)(3). The provision further provides that the evaluation of factors other than price may be based on the "contracting officer's knowledge of and previous experience with the supply or service being acquired," "customer surveys and past performance questionnaire replies," or "[a]ny other reasonable basis." *Id.*

Here, the contracting officer found both quotations met all of the solicitation's requirements and found both quotations technically acceptable. *Id.* The contracting

⁴ For example, the RFQ required that vendors provide, in relevant part, a "[l]ist of available vehicles to perform under this procurement (including make, model and year) and vehicle identification number (VIN), as well as location of hub/main office." RFQ at 58. The solicitation also asked vendors to "[d]escribe how the [vendor] will provide coverage when VA needs may be in excess of the contractor's own fleet." *Id.* In addition, with regard to price, the solicitation required that vendors propose pricing for the VA's estimate of 4,920 one-way transport trips per year or approximately 95 one way transports each week. *Id.* at 17.

officer found Ambicab's past performance lower risk and therefore more advantageous to the VA than Virgo's. *Id.* at 4. With regard to price, the awardee quoted a total price of \$4,579,027, and Virgo quoted a total price of \$5,106,400. *Id.* Because both prices were below the independent government cost estimate, the contracting officer found them to be fair and reasonable. *Id.*; Supp. MOL at 12. Ultimately, the contracting officer concluded, “[b]ased on the above comparative evaluation” that “Ami[C]ab’s offer is the most advantageous to the [g]overnment when considering price and past performance.” *Id.*

Based on our review of the record, we conclude that the award decision document reasonably supports the agency’s determination that AmbiCab’s quotation is most advantageous to the government. The agency’s award decision is consistent with the basis for evaluation set forth in the solicitation and the requirements of FAR part 13. Once the contracting officer found both quotations were technically acceptable, the comparative analysis focused on past performance and price. To the extent the protester contends that its quotation should have been evaluated differently or viewed as superior, the protester’s disagreement with the agency’s assessments, without more, is insufficient to demonstrate that the award decision is unreasonable or otherwise improper.

The protest is denied.

Edda Emmanuelli Perez
General Counsel