



Decision

Matter of: Citizen Contracting Group, LLC

File: B-420810

Date: September 13, 2022

Jamie Bovender, Citizen Contracting Group, LLC, for the protester.
Natica Chapman Neely, Esq., Department of Veterans Affairs, for the agency.
Michael P. Price, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency acted reasonably when it terminated the protester's contract for convenience of the government and cancelled the solicitation where the agency discovered post-award that the protester's quotation failed to conform with the solicitation's requirements and that the solicitation otherwise contained defects and inconsistencies.

DECISION

Citizen Contracting Group, LLC (Citizen), a service-disabled veteran-owned small business of Broken Arrow, Oklahoma, protests the termination of its contract by the Department of Veterans Affairs (VA), awarded under request for quotations (RFQ) No. 36C24722Q0402 for lock and security components and installation. The protester contends that the agency's termination of the contract was not justified and was otherwise improper.

We deny the protest.

BACKGROUND

On March 24, 2022, the VA issued the RFQ under the provisions of Federal Acquisition Regulation (FAR) parts 12 and 13, seeking quotations for the supply and installation of electronic locks at the VA Medical Center in Dublin, Georgia. Agency Report (AR), Exh. 1, RFQ at 2. The RFQ contemplated the award of a fixed-price contract, and informed vendors that award would be made to the responsible vendor whose quotation would be most advantageous to the government using three evaluation factors: (1) technical capability; (2) past performance; and (3) price. *Id.* at 46, 63. The two non-price factors, when combined, were more important than price. *Id.* at 46. The RFQ

also contained FAR clause 52.212-4(l), which reserved to the government the right to terminate the awarded contract for its sole convenience. FAR clause 52.212-4(l).

The VA received two quotations by the March 30 closing date for receipt of quotations, one from Citizen and one from Mayhew Technology Solutions (Mayhew). Memorandum of Law (MOL) at 2. The agency evaluated the vendors' quotations, and after assigning them both equal ratings under the two non-price factors, the agency awarded the contract to Citizen because its quoted price was lower than Mayhew's quoted price. *Id.* The agency notified the protester that it was the successful vendor on April 15, and posted a notice of award to the SAM.gov website on April 25.¹ On April 26, in response to a request from Mayhew and in accordance with FAR part 13, the VA explained to Mayhew its award decision. *Id.*; FAR 13.106-3(d).

Subsequently, on April 29, Mayhew filed an agency-level protest with the VA, challenging the contract award to Citizen. AR, Exh. 5, Agency-Level Protest at 6. In its agency-level protest, Mayhew argued that Citizen did not possess the requisite number of years' of experience, and asserted that Citizen was not certified to sell, install, and service the required lock and security components. *Id.* at 6-7.

After reviewing the protest and the procurement record, the contracting officer for the procurement identified issues with the RFQ's statement of work requirements, the evaluation criteria, and both vendors' quotations. Contracting Officer's Statement at 2. She subsequently determined that corrective action was needed, which included cancellation of the award to Citizen, cancellation of the underlying solicitation, and a re-solicitation of the requirement after the agency had an opportunity to review its needs and perform the appropriate market research. *Id.* at 3; AR, Exh. 6, Agency-Level Protest Decision at 8-9.

On June 1, the VA notified Citizen that it was taking corrective action in response to the agency-level protest and terminating Citizen's contract for the convenience of the government pursuant to FAR clause 52.212-4(l). Protest, exh. 15, Notice of Termination for Convenience at 1. The protester filed the instant protest with our Office on June 10.

DISCUSSION

Citizen protests the termination of its contract and corrective action taken by the VA in response to the agency-level protest. The protester argues that the agency's termination of its contract was not justified, and that the agency has "taken advantage

¹ The SAM.gov website is the current government-wide point of entry, "the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public." FAR 2.101.

of” its authority to unilaterally cancel a contract for the convenience of the government. Protest at 6. Further, the protester contends that some of the agency’s purported reasons for taking corrective action, including the need to conduct appropriate market research and to re-evaluate its actual procurement needs, are “unfounded.”² Protest at 5.

The VA argues that its decision to take corrective action and terminate Citizen’s contract was appropriate because it resulted from the post-award discovery of multiple defects with the award process. These defects include: (1) the protester’s quotation did not conform to the solicitation requirements, which should have made the protester ineligible for award; and (2) the evaluation criteria in the solicitation contained inconsistencies.³ MOL at 5-6 n.4, 6-9. Because of these defects, the agency contends that its corrective action, including the termination of the protester’s contract, was justified.

We have considered all of the parties’ arguments, and as explained below, conclude that none of Citizen’s protest grounds provide a basis on which to object to the VA’s conduct of the procurement.

Generally, our Office declines to review challenges to the termination of contracts for convenience of the government because such disputes are matters of contract administration. *AutoFlex, Inc.*, B-415926, Apr. 19, 2018, 2018 CPD ¶ 145 at 3. We will, however, review the propriety of a contract termination where it flows from a defect that the contracting agency perceived in the award process. In such cases, we examine the award procedures that underlie the termination action for the limited purpose of determining whether the initial award was improper, and, if so, whether the corrective action taken is proper. *American Material Handling, Inc.*, B-406739, Aug. 14, 2012,

² In its protest, Citizen makes several allegations concerning contract steering, improper collusion, and a *quid pro quo* between the VA and Mayhew. Protest at 4-5. These allegations appear to be partly based on the agency’s phrasing in its notice of termination of a “promise” to take corrective action. Protest, exh. 15, Notice of Termination of Convenience. The protester mischaracterizes the language in the notice of termination, as there is nothing in the notice or the record that states or even suggests that the agency made a promise to Mayhew in return for the cancellation of the contract. Rather, the notice is reasonably understood to be a statement of the agency’s intentions with respect to the anticipated corrective action. Because the protester merely speculates without any support that the agency engaged in contract steering, collusion, or a *quid pro quo* with Mayhew, we do not address these allegations in this decision. See 4 C.F.R. § 21.1(c)(4), (f).

³ In its review of the procurement record, the agency identified additional defects with the protester’s quotation and with the solicitation. See MOL at 5 n.4, 6-9. We do not address all of the agency’s perceived defects with the procurement here because we find that the agency has otherwise properly exercised its discretion in taking corrective action and terminating the protester’s award.

2012 CPD ¶ 234 at 3. Further, as a general rule, agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure a fair and impartial competition. *IDEAL Industries, Inc.*, B-416416, July 26, 2018, 2018 CPD ¶ 253 at 4. We will not object to an agency's corrective action where the agency concludes that the award, because of perceived flaws in the procurement process, was not necessarily made on the basis most advantageous to the government, so long as the corrective action taken is appropriate to remedy the impropriety. *AutoFlex, Inc.*, *supra* at 3.

Here, Citizen has not demonstrated that the corrective action was outside the VA's discretion or otherwise inappropriate to remedy the many errors identified by the contracting officer in her review of the procurement process. With respect to the protester's quotation, the agency concluded that multiple defects resulted in the quotation being ineligible for award for failing to meet the requirements of the solicitation. For example, the RFQ contained VA Acquisition Regulation clause 852.219-77, which imposes certain limitations on subcontracting for the contract awardee. RFQ at 35. The RFQ required vendors to certify their compliance with the clause and return the formal certification with their quotations. *Id.* at 36. A quotation that did not contain this certification would be deemed ineligible for award. *Id.*

The agency found, and Citizen does not dispute,⁴ that the protester's quotation failed to include the required certification; after review of the record, the agency concluded that by the terms of the RFQ, this made the protester's quotation ineligible for award. MOL at 7. Based on our review of the record, we find no basis to disturb the agency's post-award conclusion that it improperly made award to an ineligible vendor. In this regard, the record confirms that the protester's quotation did not include the required certification. Furthermore, we conclude the agency's subsequent decision to take corrective action by terminating the protester's award is within its broad discretion and remedies the perceived defect.

Additionally, the VA identified other errors in the award process, including that the past performance evaluation criteria were confusing, and may not have resulted in the receipt of quotations that represented the best value to the government. As explained above, it is within an agency's broad discretion to take corrective action where the agency determines that award was not necessarily made on a basis most advantageous to the government. *AutoFlex, Inc.*, *supra* at 3. Other than a general

⁴ In response to the agency's argument, the protester asserts that it signed the purchase order issued by the agency and did not take exception to the terms of the solicitation and therefore its quotation was not deficient in this regard. Comments at 7. However, this fact has no bearing on whether the protester's quotation complied with the solicitation requirements. As the agency now concedes, its original conclusion that Citizen was eligible for award was erroneous because, among other things, Citizen's quotation did not include the required certification. Significantly, Citizen has not argued that the quotation did include the requisite certification.

opposition to the agency's decision to cancel its award, the protester does not articulate any specific reason why the corrective action was improper.

For example, in response to the VA's argument that the evaluation criteria under the past performance factor were confusing and should be amended, Citizen merely responds that it submitted past performance information in the format requested by the agency. Comments at 10. This argument fails to show that the agency's conclusion with respect to these evaluation criteria was unreasonable, and provides no basis to sustain the protest.

In short, we find the VA's corrective action remedies the perceived defects identified by the agency in this procurement, and further find no basis to question the agency's corrective action and termination for convenience of the protester's contract.

The protest is denied.

Edda Emmanuelli Perez
General Counsel