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Decision

Matter of: BCG Federal Corporation

File: B-421923

Date: November 30, 2023

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DIGEST

1. Due to the specific characteristics of the agency's requirements, the agency reasonably determined that requiring offerors to provide cost breakdown information for their proposed labor rates was the only acceptable method for evaluating cost/price reasonableness.
 2. Requirement that offerors provide cost breakdown information for their proposed labor rates does not violate the statutory preference for acquisition of commercial items.
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DECISION

BCG Federal Corporation, of Washington, D.C., protests the terms of request for proposals (RFP) No. 47QRCA23R0006, issued by the General Services Administration (GSA) and referred to as the "One Acquisition Solution for Integrated Services Plus (OASIS+)" unrestricted solicitation.¹ Agency Report (AR) Tab 1, Contracting Officer's Statement (COS) at 1;² see AR, Tab 2, RFP. BCG challenges the solicitation's

¹ The OASIS+ program consists of six separate government-wide multiple-award indefinite-delivery indefinite-quantity (IDIQ) procurements. Five of the six procurements are set aside for various types of small businesses and are not challenged by this protest; the sixth procurement is unrestricted and is the subject of this protest.

² Page number citations in this decision refer to the Adobe PDF page numbers in the documents submitted.

requirement that offerors must provide cost breakdown information for their proposed labor rates. Protest at 2.³

We deny the protest.

BACKGROUND

On June 15, 2023, GSA issued the solicitation, seeking proposed labor rates for 20 labor categories covering eight “domains.”⁴ See RFP at 21-35. The agency states that it selected a limited number of commonly used, broadly defined labor categories so that they would be “universally acceptable” across all domains.⁵ COS at 8; see AR, Tab 8, Pricing Strategy at 5-8.

The solicitation contemplates the award of an unlimited number of IDIQ contracts⁶ under which task orders for both commercial and non-commercial services⁷ will be

³ All citations to BCG’s protest refer to its amended protest filed on September 8.

⁴ A domain is a “functional grouping of related services.” RFP at 21-23. The eight domains under this solicitation are: management and advisory; technical and engineering; research and development; intelligence; enterprise solutions; environmental; facilities; and logistics. *Id.*

⁵ The 20 labor categories are: engineers; managers; management analysts; operations research analysts; business operations specialists; administrative services managers; general and operations managers; accountants and auditors; financial specialists; training and development specialists; executive secretaries and executive administrative assistants; logisticians; financial and investment analysts; training and development managers; teachers and instructors; human resources specialists; maintenance and repair workers; environmental scientists and specialists, including health; social scientists and related workers; and public relations specialists. AR, Tab 5, Cost/Price Template at 2.

⁶ Offerors are to submit proposals for specific domains. RFP at 150. The solicitation establishes qualification requirements for each domain and provides that contract awards will be made, by domain, to any offeror that demonstrates compliance with the applicable qualification requirements and proposes a price that is fair and reasonable. *Id.* at 195-196.

⁷ Commercial services are defined as “services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions.” Federal Acquisition Regulation (FAR) 2.101.

issued by federal agencies across the government.⁸ The solicitation also provides that ordering contracting officers may issue all types of task orders, including fixed-price, cost-reimbursement, time-and-materials, and labor-hour task orders.⁹

Based on the agency's market research, which included consideration of data from prior procurements,¹⁰ the agency concluded that subsequent task orders under the OASIS+ contracts will be for "predominantly non-commercial services."¹¹ AR, Tab 10, Commerciality Determination at 1-3. Accordingly, the agency determined that this procurement does not meet the requirements to be considered a commercial item procurement.¹² *Id.*; see FAR 12.102(a).

⁸ The agency states that the procurement will provide "a full range of service requirements that integrate multiple service disciplines and ancillary services/products." COS at 1; see RFP at 12.

⁹ The agency's market research concluded that ordering contracting officers must have the flexibility to award both commercial and non-commercial task orders of all types because the federal government's requirements "have become increasingly complex with many service procurements having elements of several categories of spend," and adds that "[m]ission requirements are frequently evolving due to changing threats, policies, and the public's emerging procurement needs." AR, Tab 11(b), Market Research Report at 3.

¹⁰ In addition to task orders issued under the prior OASIS program, the OASIS+ solicitation includes requirements that are currently being purchased under the Human Capital and Training Solutions and Building Maintenance and Operations IDIQ contracts. *Id.* at 3-5.

¹¹ Since the specific requirements will be determined at the task order level, the agency's determination of non-commercial services was, of necessity, performed at a high level. In making its determination, the agency considered the nature of the task orders that had been issued under the predecessor contracts; concluded that the majority of those task orders were cost-reimbursement and, thus, reflected non-commercial requirements because the FAR prohibits cost-reimbursement contracts for commercial items, see FAR 16.301-3(b); and projected that the task orders under the OASIS+ program will, similarly, reflect acquisition of primarily non-commercial services. AR, Tab 10, Commerciality Determination at 1-3.

¹² An agency's commerciality determination is largely within the agency's discretion, and such a determination will not be disturbed by our Office unless it is shown to be unreasonable. *C3.ai, Inc.*, B-418676, July 28, 2020, 2020 CPD ¶ 256 at 6-8. Here, based on the agency's analysis, documented in its market research report and commerciality determination, we do not question the agency's determination regarding commerciality. AR, Tab 10, Commerciality Determination at 1-3; Tab 11, Market Research Report at 1-53.

The agency states that its original acquisition strategy did not include evaluation of cost/price at the IDIQ level. COS at 2. In this regard, the agency explains that it initially intended to use GSA's "Class Deviation DC-2020-14," which is "based on Section 876 of the National Defense Authorization Act . . . [and] allows for the dismissal of consideration of cost/price as an evaluation factor for the award of certain . . . IDIQ multiple award contracts." *Id.* However, in April 2023, the U.S. Court of Federal Claims (COFC) issued a decision which limited application of this class deviation to IDIQ contracts that "clearly feature time-and-materials and labor-hour task orders." See AR, Tab 9, *SH Synergy, LLC v. United States*, 165 Fed Cl. 745 (Apr. 2023) at 68. Following that COFC decision, the agency changed its pricing strategy to require that all offerors submit cost/price information from which the agency will assess price reasonableness.¹³ *Id.* Specifically, the solicitation provides that each offeror must: propose fully burdened labor rates for each of the 20 labor categories; identify its direct labor rates, indirect rates (including fringe benefits, overhead, and general and administrative expenses), and profit;¹⁴ and submit a basis of estimate. RFP at 186-191. With regard to indirect rates, the solicitation states:

Offerors shall propose indirect rate percentages according to their most current DCAA [Defense Contract Audit Agency], DCMA [Defense Contract Management Agency] or CFA [cognizant federal agency] approved FPRA [forward pricing rate agreement], FPRR [forward pricing rate recommendation], and/or Provisional Billing Rates (PBR), if available. . . .
If an Offeror does not have . . . approved FPRAs, FPRRs, Provisional Billing Rates, or other approved rates, Offerors shall propose indirect rate percentages generated from their accounting system.

Id. at 188 (emphasis added.)

Finally, the solicitation provides that a proposal will be rejected if the agency is unable to determine that an offeror's proposed rates are fair and reasonable, or a proposal reflects "missing or incomplete" pricing information.¹⁵ *Id.* at 205-06.

On August 28, 2023, BCG filed its initial protest and, on September 8, submitted an amended protest.

¹³ The solicitation provides that price realism "will not be performed" and notes that the proposed rates will serve as ceiling rates under certain circumstances, including the issuance of task orders where there is insufficient competition. RFP at 186-188, 206.

¹⁴ This information is referred to as "other than certified cost or pricing data." See FAR 2.101.

¹⁵ The solicitation states that the agency "intends to award contracts without discussions." RFP at 196.

DISCUSSION

BCG states that it “does not do business with any client using a cost-based pricing methodology” and does not maintain an accounting system that “accumulates and allocates the direct and indirect costs and profit that underlie its pricing.” Protest at 19. In this context, BCG maintains that the solicitation’s requirement that offerors disclose breakdowns of their proposed labor rates: (1) “violates” FAR subpart 15.4, which identifies various alternative methods for evaluating cost/price; and (2) “is incompatible” with the Federal Acquisition Streamlining Act of 1994 (FASA), which establishes a preference for the acquisition of commercial items.¹⁶ Protest at 12-18. We find no merit in BCG’s allegations.¹⁷

Alleged Violation of FAR Subpart 15.4

First, BCG complains that, in requiring all offerors to provide a breakdown of their proposed labor rates, the agency improperly relied on FAR section 15.404-1, which states:

[c]ontracting officers shall obtain data other than certified cost or pricing data¹⁸ from the offeror . . . for all acquisitions (including commercial acquisitions), if that is the contracting officer’s only means to determine the price to be fair and reasonable.

FAR 15.404-1(b)(1).

BCG notes that FAR section 15.404-1 identifies various alternative methods for assessing price reasonableness, including comparison of proposed prices to various benchmarks such as: other prices proposed in response to the solicitation; historical prices; parametric pricing (such as dollars per pound or other units); published price lists; independent government estimates; and prices obtained through market

¹⁶ Throughout its protest submissions, BCG purports to speak on behalf of “other commercial items contractors,” see, e.g., Protest at 2, 9, 11, 12, 14, 17, 18, and asserts that the solicitation “precludes commercial products and services contractors from competing in this acquisition.” Comments at 15. The agency states that, on or before the solicitation’s October 20 closing date, the agency received “a voluminous number of proposals,” including a proposal submitted by BCG--and notes that only BCG has protested the terms of this solicitation. COS at 4; Agency Response to GAO Questions at 8. In any event, BCG does not qualify as an interested party to file a protest based on alleged prejudice to other potential offerors. See 4 CFR 21.0.

¹⁷ In its various protest submissions, BCG presents arguments that are variations of, or additions to, those specifically discussed below. We have considered all of BCG’s allegations and find no basis to sustain its protest.

¹⁸ As noted above, the cost breakdown information at issue here is “other than certified cost or pricing data.” See FAR 2.101.

research.¹⁹ See FAR 15.404-1(b)(2)(i)-(vi). BCG maintains that these alternative methods are “viable,” and asserts that the agency “irrationally” concluded that obtaining each offeror’s price breakdown information was the “only means to determine the price [reasonableness].” Protest at 13.

The agency responds that the FAR: requires procuring agencies to determine whether offerors’ prices are fair and reasonable; identifies various permissible techniques for making those determinations, including “[a]nalysis of data other than certified cost or pricing data . . . provided by the offeror”; states that such techniques may be used “singly or in combination”; and provides that the agency’s approach should reflect “[t]he complexity and circumstances of each acquisition.” FAR 15.404-1(a)(1); 15.404-1(b)(2)(vii); *see also* SH *Synergy*, *supra*. In this context, the agency maintains that the complexity and specific circumstances reflected in the OASIS+ procurement drove the agency’s determination that requiring cost breakdowns of offerors’ proposed labor rates was the only acceptable methodology for assessing price reasonableness.

More specifically, the agency notes that, in preparing the solicitation, it considered the various alternative methods for assessing cost/price reasonableness and concluded that none was acceptable due to the following unique characteristics of the OASIS+ procurement: (1) each offeror’s definition of a given labor category may differ based on the domain in which it is being used; (2) the scope of OASIS+ is considerably broader than the prior OASIS program or other prior contracts; (3) the OASIS+ labor categories are not the same as the labor categories under the prior OASIS program; and (4) offerors will be located all over the country. COS at 6-12. Accordingly, the agency concluded that comparison of proposed prices to the various benchmarks identified in FAR section 15.404-1 (including other proposed prices; historical prices; published price lists; market research; or independent government estimates) would lead to a range of rates that are essentially meaningless, and will fail to provide the necessary level of accuracy and reliability.

The agency further notes that, while the OASIS+ program does not require an accounting system review prior to award,²⁰ an offeror that does not know the buildup of its proposed rates creates great risk for the agency.²¹ AR, Tab 7, White Paper at 17. The agency further notes that offerors have differing cost drivers, and that the agency will consider an offeror’s explanation and rationale for its cost drivers in making price reasonableness assessments. COS at 11. In summary, the agency maintains, that due

¹⁹ BCG notes that the FAR provides that the first two methods (comparison to other proposed prices and comparison to historical prices) are “the preferred techniques.” See FAR 15.404-1(b)(3).

²⁰ Under the predecessor OASIS program, all offerors “had to go through a Defense Contract Audit Agency accounting system review, because an approved accounting system was required for initial contract award.” COS at 9.

²¹ The agency also notes that, to be considered responsible, a prospective contractor must have adequate accounting controls. COS at 11; *see* FAR 9.104.

to the unique characteristics of this procurement, obtaining the cost breakdown information at issue here, as authorized by FAR section 15.404-1 is the only acceptable method that will provide the insight necessary for the agency to make the required price reasonableness determinations at the IDIQ level.

Procuring agencies must condition the award of a contract upon a finding that the contract contains “fair and reasonable prices.” FAR 15.402(a), 15.404-1(a). See *Crawford RealStreet Joint Venture*, B-415193.2, B-415193.3, Apr. 2, 2018, 2018 CPD ¶ 121 at 9. As discussed above, the FAR identifies various permissible methods for assessing price reasonableness and provides that the manner in which an agency’s price analysis is performed should be based on “[t]he complexity and circumstances of each acquisition.” FAR 15.404-1(a) and (b). Finally, contracting officers are directed to obtain the information at issue here “for all acquisitions (including commercial acquisitions) if that is the contracting officer’s only means to determine the price to be fair and reasonable.”²² FAR 15.404-1(b)(1).

Here, based on our review of the record, we reject BCG’s assertion that it was unreasonable for the agency to require offerors to provide a breakdown of their proposed labor rates. As discussed above, based on the agency’s assessment of its needs, it identified a limited number of broadly defined labor categories to perform a wide range of undefined requirements across all domains and, as a consequence, the agency recognized that offerors’ specific application of the labor categories to different domains will likely reflect widely varying rates, rendering a comparison of fully loaded labor rates to each other an unreliable basis for evaluating price reasonableness. Similarly, the agency recognized that comparison of proposed prices to the other types of benchmarks identified in FAR sections 15.404-1(b)(2)(i-vi) would result in unreliable price reasonableness determinations due to: differences in the labor categories used in prior procurements; differences in the scope of the OASIS+ requirements from prior procurements; the nationwide location of offerors; and the need for the agency to assess the risk associated with an offeror’s proposed rates. Accordingly, the agency reasonably determined that assessing the individual cost drivers associated with each offeror’s unique labor rates was the only acceptable method for making reliable and accurate cost/price reasonableness determinations. BCG’s protest to the contrary is denied.

²² Similarly, the FAR provides that “[c]ost analysis may also be used to evaluate data other than certified cost or pricing data to determine cost reasonableness . . . when a fair and reasonable price cannot be determined through price analysis alone.” FAR 15.404-1(a)(4).

Compliance with FASA

Next, BCG asserts that the requirement for offerors to provide cost breakdown information “do[es] not align” with the policy expressed in FASA that provides for acquisition of commercial items “to the maximum extent practicable.”²³ Protest at 14-16; see 41 U.S.C. § 3307(b). BCG complains that, by requiring a breakdown of proposed labor rates, the solicitation fails to “maximize participation from commercial sources,” and asserts that the requirement “preclude[s] commercial service contractors from bidding.”²⁴ Protest at 15,17; Comments at 14-16, 18.

The agency responds that the OASIS+ solicitation complies with the requirements of FASA, noting that FASA establishes a preference for acquiring commercial items “to the maximum extent practicable”--not a mandate--and further provides that commercial item contractors are to be “provided an opportunity to compete.” COS at 12; see 41 U.S.C. § 3307(b). In this context, the agency notes that: the OASIS+ procurement is designed to address the government’s unique requirements for complex task orders covering both commercial and non-commercial services;²⁵ the solicitation does not limit awardees, provided they demonstrate the necessary qualifications and offer a fair and reasonable price; and, although a majority of task orders will be for non-commercial services, the solicitation accommodates commercial item contractors by not requiring an accounting system review to be eligible for award. COS at 12-14. In short, the agency maintains that the OASIS+ solicitation at issue here fully complies with the FASA provisions.

Our decisions provide that a contracting agency has the discretion to determine its needs and the best method to accommodate them. *General Electrodynamics Corp.*, B-298698, B-298698.2, Nov. 27, 2006, 2006 CPD ¶ 180 at 3. This principle applies to the contracting format used to purchase the items which the agency has determined necessary. *Voith*

²³ BCG also refers to the provisions of FAR part 12, which state that solicitations for commercial item procurements should not include provisions that are “inconsistent with customary commercial practice.” Protest at 15; see FAR 12.301(a), 12.302(c). However, as discussed above, the agency reasonably determined that the majority of task orders issued under this solicitation will be for non-commercial services. See AR, Tab 10, Commerciality Determination at 2. Accordingly, we reject BCG’s assertion that the solicitation must comply with FAR part 12 limitations. See *C3.ai, Inc.*, B-418676, July 28, 2020, 2020 CPD ¶ 256 at 7-16 (denying protest that FAR part 12 provisions must be applied to a procurement combining commercial and non-commercial requirements).

²⁴ As noted above, BCG has, in fact, submitted a proposal for this procurement, and BCG is the only company to have filed a protest challenging the terms of this solicitation.

²⁵ In contrast, the agency notes that GSA’s multiple award schedule program (MAS) is solely dedicated to commercial items, and the agency intends for the scope of the OASIS+ procurement to be considerably broader than--not a duplication of--the MAS program. COS at 12.

Hydro, Inc., B-401244.2, B-401771, Nov. 13, 2009, 2009 CPD ¶ 239 at 4. Our Office will not object to an agency's determination in this regard unless the protester shows that it is clearly unreasonable. *Id.*

Here, we reject BCG's assertion that the OASIS+ solicitation fails to comply with FASA's stated preference for acquiring commercial items "to the maximum extent practicable" and BCG's assertion that the solicitation "precludes commercial items contractors from bidding." First, as noted by the agency, FASA establishes a preference, not a mandate, for the acquisition of commercial items. Further, as discussed above, it is clear that, in structuring the OASIS+ solicitation, the agency took affirmative action to accommodate commercial item contractors and to encourage their participation; BCG has not demonstrated that the agency's efforts in that regard were clearly unreasonable. Finally, the agency appears to have been successful in such efforts in that no potential offeror other than BCG has filed a protest challenging the solicitation requirements and BCG, itself, submitted a proposal.²⁶ On this record, we conclude that the solicitation is consistent with FASA's stated preference for the acquisition of commercial items. BCG's protest to the contrary is without merit.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

²⁶ Moreover, we note that, even if the agency were to separately evaluate the proposed pricing for commercial and non-commercial items, it would still be unable to make reliable cost/price reasonableness assessments due to: the broadly defined labor categories that are being proposed for performance of a wide range of undefined requirements across all domains; differences in the scope of the OASIS+ requirements as compared to prior procurements; the nationwide location of offerors; and the need for the agency to assess the risk associated with an offeror's proposed rates