



Decision

Matter of: DMS Pharmaceutical Group, Inc.

File: B-406305

Date: April 6, 2012

Christina L. Anderson for the protester.

Vanessa L. Calabrese, Esq., and Maura C. Brown, Esq., Department of Veterans Affairs, for the agency.

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DIGEST

Protest by small business against the rejection of its proposal and the consequent withdrawal of a small business set-aside under a solicitation with a cascading evaluation feature, which contemplated the withdrawal of the set aside if the agency received less than two acceptable small business responses, is denied, where the agency received only two small business proposals and the protester's proposal was reasonably evaluated and found technically unacceptable.

DECISION

DMS Pharmaceutical Group, Inc., of Park Ridge, Illinois, protests the Department of Veterans Affairs (VA) rejection of its proposal and the withdrawal of a small business set-aside line item under request for proposals (RFP) No. VA-797-11-RP-0069, for the distribution of pharmaceutical products.

We deny the protest.

The RFP, issued on May 5, 2011 under the commercial item acquisition procedures of Federal Acquisition Regulation (FAR) Part 12, sought to award multiple fixed-price requirements contracts to distribute pharmaceutical products under the VA's pharmaceutical prime vendor (PPV) program¹ to VA medical facilities within

¹ According to the RFP, a PPV is a business concern that provides a broad range of pharmaceutical products to VA facilities within a specific geographic region and is

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the agency's Veteran Integrated Service Networks (VISN).² The RFP contemplated multiple awards and solicited proposals for various geographic regions included under 14 separate line items. Line item 6 (Great Lakes Region) and line item 8 (Heartland Region) were set aside for small businesses. DMS's protest only concerns line item 6.³

With regard to the set-aside line items, the RFP provided for award of these items to be based on a cascading evaluation method, which contemplated withdrawal of the set-aside and award on an unrestricted basis, if the agency received less than two acceptable small business responses. To this effect, the RFP stated:

Pursuant to FAR Part 19, these two line items are **set-aside** for the exclusive participation of small business concerns, provided that a minimum of two offers, in accordance with this solicitation, are received from responsible small business concerns whose offers meet the solicitation requirements in terms of technical acceptability, past performance, and fair market price. If only one offer from a responsible small business concern[] is received, the contracting officer reserves the right to make award if the offer meets the solicitation requirements . . . The VA contracting officer reserves the right to consider competitive proposals submitted from all responsible offerors (including large businesses) in determining the fair market price . . .

If the contracting officer determines that offers from small business concerns do not meet the solicitation requirements in terms of technical acceptability, past performance, and fair market price, the small business set-aside[s] . . . will be withdrawn and award will be made on the basis of full and open competition.

RFP at 124.

Award(s) under the RFP were to be made for each line item to the lowest-priced, technically acceptable offer considering certain "go/no-go" evaluation factors, past performance, and price. The "go/no-go" factors were (a) evidence of 5-years experience as a pharmaceutical prime vendor or a pharmaceutical wholesaler,

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responsible for maintaining adequate inventory levels and delivering products to participating facilities by the next scheduled business day. RFP at 9.

² A VISN is a group of VA medical facilities within one of 23 specific geographic areas. RFP at 12.

³ The VA estimates the annual value of line item 6 as approximately \$138 million.

(b) web-based ordering system capabilities, (c) contract implementation, (d) product price loading, (e) distribution center(s), and (f) contingency plan. RFP at 125-26. Each of these “go/no-go” factors contained criteria setting forth the minimum standards to be found acceptable, as well as proposal instructions stating what information must be provided in the proposal with regard to each factor. RFP at 116-17, 125-26. The RFP advised that “any proposal that fails to meet these criteria will be rejected and shall receive no further consideration.” RFP at 125.

The VA received proposals from two small businesses (including DMS) for line item 6 by the closing date. Both small businesses’ proposals were determined to be technically unacceptable by the VA’s technical evaluation panel (TEP) because they received “no-go” ratings under some of the “go/no-go” evaluation factors. DMS’s proposal was rated “no-go” for three of the factors: evidence of 5-years experience as a prime vendor, web-based ordering system capabilities, and distribution center(s). Agency Report (AR), Tab 5, Determination to Withdraw Set Aside, at 2. The other small business’ proposal was also rated “no-go” for the web based ordering capabilities and distribution(s) factors. Id. In addition, both small businesses proposed prices that the agency found were not fair market prices. Because both small business proposals were rated unacceptable and their prices were not considered fair market prices, the VA withdrew the set aside for line items 6 and 8, and rejected DMS’s proposal. This protest from DMS followed.

DMS protests the evaluation of its proposal and the consequent withdrawal of the small business set-aside for line item 6, asserting that its proposal was rejected for “arbitrary reasons.” See Protest at 2.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. Encorp-Samcrete Joint Venture, B-284171, B-284171.2, Mar. 2, 2000, 2000 CPD ¶ 55 at 4. In reviewing an agency’s evaluation, we will not reevaluate technical 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. The offeror has the burden of submitting an adequately written proposal, and an offeror’s mere disagreement with the agency’s judgment concerning the adequacy of the proposal is not sufficient to establish that the agency acted unreasonably. PEMCO World Air Servs., B-284240.3 et al., Mar. 27, 2000, 2000 CPD ¶ 71 at 15.

Here, the record establishes that the VA reasonably determined that DMS’s proposal was unacceptable because it failed to meet several of the “go/no-go” evaluation factors. For example, with regard to web-based ordering system capabilities factor, the RFP required an offeror’s system to include an electronic catalog and an inventory management capable of: demand forecasting, calculation of economic order quantity, calculation of safety stock levels, calculation of reorder

point, calculation of inventory stock level, and stratified inventory analysis. RFP at 125. The RFP further required offerors to provide with their proposals screen shots and sample reports that show that the inventory management component is capable of these requirements. See RFP at 116-117. In evaluating DMS's response to this factor, the TEP found:

The offeror was required to provide screen shots and sample reports that showed their inventory management system possessed the capabilities listed . . . Upon accessing the offeror's electronic system, it was determined that the current system has no existing inventory management capabilities. The proposal provided a **concept** screen shot of Demand Forecasting and a **concept** spreadsheet for Inventory Status and Demand Forecast Report. In addition, the concept that was presented failed to include all required components of Inventory Management as specified in the Instructions to Offerors (e.g. Stratified Inventory Analysis). The sample report provided no information or data on the requested components of inventory management as required in the Instructions to Offerors.

AR, Tab 4, DMS Technical Evaluation, at 2.

DMS does not deny, and our review confirms, that its proposal did not provide the required screen shots and sample reports that addressed all of the components required by the web-based ordering systems capabilities evaluation factor. DMS nevertheless advises that it has no current customers that require the level of detail required by the RFP to manage the customers' inventory, and that it is unlikely that any small business has an inventory system with the capabilities requested by the RFP. DMS asserts that in the absence of a current customer with these requirements, it responded with its concept as to how the information could be provided and agreed in its proposal to provide all the components required by the evaluation factor. See DMS Proposal, Tab 1b, at 22.

As noted above, here the RFP specifically required the offeror to provide in its proposal evidence of a web-based ordering system that possessed electronic catalog and inventory management capabilities and to provide screen shots and sample reports that show that the offeror's system was capable of meeting all of the VA's requirements listed in the evaluation factor.⁴ DMS admits that its inventory

⁴ To the extent that DMS contends that the requirement for small businesses to currently possess an inventory management system capable of meeting the requirement is unduly restrictive, this contention may not be considered at this juncture because it is untimely raised under our Bid Protest Regulations. Protests based upon alleged improprieties in a solicitation which are apparent prior to time set for receipt of initial proposal, such as whether certain specifications are unduly
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management system did not possess all of the necessary capabilities and that its proposal did not provide all of the information required, but that its proposal promised that its system would be modified to provide all of the required features. Under the circumstances, the agency reasonably found that DMS's proposal was "no-go" under this factor.

The RFP's evaluation scheme specifically stated that to be acceptable, an offeror's proposal must be rated "go" under each of the "go/no-go" evaluation factors in order to be considered acceptable, and that any proposal failing to meet these criteria would be rejected. RFP at 125. Thus, the VA properly rejected DMS's proposal as technically unacceptable consistent with the terms of the RFP.⁵ As a consequence, we find that the VA, in accordance with the cascading evaluation feature properly withdrew the small business set-aside for line item 6 because it did not receive acceptable proposals from two small businesses.

The protest is denied.

Lynn H. Gibson
General Counsel

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restrictive, are required to be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2011).

⁵ Under the circumstances, we need not discuss the evaluation of DMS's proposal under the other two "go/no-go" factors or the determination that it did not offer a fair market price.