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Decision

Matter of: Sterling Medical Associates, Inc.

File: B-406729; B-406729.2

Date: August 8, 2012

Barbara A. Duncombe, Esq., Taft Stettinius & Hollister, LLP, for the protester.
Rebecca L. Tranthem, Esq., Department of Veterans Affairs, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Protest of the exclusion of the protester's proposal from the competitive range is denied where an agency reasonably found that the protester's proposal did not have a reasonable possibility of being selected for award.

DECISION

Sterling Medical Associates, Inc., of Cincinnati, Ohio, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. VA248-11-RP-0061, issued by the Department of Veterans Affairs (VA) for healthcare services for Community-Based Outpatient Clinics (CBOC) in various locations in Florida.

We deny the protest.

BACKGROUND

The RFP provides for the award of a fixed-price, indefinite-quantity contract for primary care and mental health services in CBOCs in Okeechobee, Vero Beach, Fort Pierce, Stuart, Delray Beach, and Boca Raton, Florida for a base year and four option years. RFP § B.2, at 6, 8; § E.3, at 142. A detailed statement of work was provided, describing the services to be performed. In this regard, the RFP provided estimated veteran enrollments at each CBOC and identified estimates of the number of veterans residing in the areas to be covered by the contract. RFP § B.4, at 23.

Offerors were informed that award would be made on a best value basis, considering the following factors, in descending order of importance: experience and staffing, coordination and continuity of care, past performance, subcontracting plan, and price. Subfactors were identified under the experience and staffing and the coordination and continuity of care factors, and were also stated to be in descending order of importance. RFP § E.10 at 146-48; RFP amend 6, at 1. Offerors were informed that the technical evaluation factors, when combined, were more important than price. RFP § E.10, at 145.

The RFP provided instructions for the preparation of proposals under each evaluation factor. RFP § E.10, at 146-48. For example, with respect to the experience and staffing factor, offerors were instructed to identify the qualified physicians and other health care providers they intended to use and to describe their mechanism for scheduling physicians and staff to cover the required clinic schedule. RFP § E.10 at 146. With respect to the past performance factor, offerors were instructed to provide a minimum of three past performance surveys from three different references with knowledge of the offeror's performance of the "same type of service." RFP § E.10, at 147-48 (emphasis in original).

For price, the RFP instructed offerors to provide a monthly capitation rate, which the RFP described as the unit cost per veteran inclusive of all services. RFP § E.10, at 146, 148. The RFP provided six contract line items (CLIN), one for each CBOC location. For each CLIN, the RFP identified an estimated quantity of visits, and requested the offerors' monthly capitation rate. The RFP noted that the total annual CLIN price would be determined by multiplying the offeror's monthly rate by the estimated quantity and by 12 months. RFP § B.5, at 55. The offerors' total evaluated prices would be calculated by adding together the sums of the total annual CLIN prices for the base and option years. RFP § E.10, at 146. The RFP also stated that, in accordance with FAR § 52.222-41, the Service Contract Act of 1965, Department of Labor Wage Determination No. WD2005-2111 (rev. 9) would be incorporated into the contract. Id., § D, at 98. Amendment 1 to the RFP replaced this wage determination with No. 2005-2113 (rev. 12). Id., amend. 2.¹

The VA received proposals from [deleted] offerors, including Sterling, [deleted].² Contracting Officer's (CO) Statement at 2. The proposals were evaluated by the

¹ There appears to be a discrepancy between the two wage determinations. The original provided wages for the counties of Broward, Glades, Hendry, Martin, Okeechobee, Palm Beach and St. Lucie. RFP § D, at 98. The counties covered by wage determination in RFP amendment 1 are Alachua, Bradford, Citrus, Dixie, Gilchrist, Lake, Levy, Marion, Sumter and Union. RFP amend. 1, attach 1, at 5.

² Sterling submitted 12 different pricing schedules ranging from a high total price of \$113,816,114 to a low total price of \$112,104,866. AR, Tab 4, Sterling Price/Cost (continued...)

agency's source selection evaluation committee (SSEC). See Agency Report (AR), Tab 5, Summary Evaluation Report. After the initial evaluation, the agency sought clarifications from each offeror, amended the RFP twice based upon information received in responses to the clarification requests, and prepared a final evaluation report. Id. at 1. The proposals were evaluated as follows:³

	Overall Technical Rating	Price
[Deleted]	Good	[deleted]
[Deleted]	Satisfactory	[deleted]
Offeror A	Satisfactory	\$94,047,000
Sterling Medical	Satisfactory	\$112,104,866
Offeror B	Satisfactory	[deleted]
Offeror C	Satisfactory	[deleted]
Offeror D	Satisfactory	[deleted]

Id. at 2; Tab 6, Competitive Range Decision, at 3.

The SSEC's adjectival ratings were supported by a narrative discussion of each offerors' evaluated strengths and weaknesses under each technical factor and subfactor. For example with respect to the experience and staffing and the coordination and continuity factors, under which Sterling's proposal received satisfactory ratings, the SSEC noted both strengths and weaknesses. AR, Tab 5, Summary Evaluation Report, at 17. With respect to the past performance factor, under which Sterling's proposal was rated marginal, the SSEC noted that although Sterling had indicated relevant experience on a smaller scale, Sterling had provided

(...continued)

Versions. The agency evaluated Sterling's lowest priced version. AR, Tab 6, Competitive Range Decision, at 3.

³ The SSEC rated proposals as outstanding, good, satisfactory, marginal, and unsatisfactory under each of the non-price factors and determined an overall technical rating. As relevant here, a good rating reflected a proposal with a thorough understanding of program goals, methods, resources or other aspects essential to performance, contained major and/or minor strengths, and weaknesses, if any, were minor and offset by strengths. A satisfactory rating reflected a proposal with an adequate understanding of program goals, methods, resources or other aspects essential to performance, contained few, if any, exceptional features, and had weaknesses that were generally offset by strengths. A marginal rating reflected a proposal with superficial or vague understanding of program goals, methods, resources, or other aspects essential to performance, containing weaknesses that were not offset by strengths. AR, Tab 5, Summary Evaluation Report, at 1-2.

only one past performance survey, and not the three surveys required by the RFP. Id. at 17-18. The SSEC also noted as a weakness under the past performance factor that Sterling had failed to provide information to allow the agency to assess the protester's performance on existing contracts. Id. at 17. Sterling's overall satisfactory rating reflected the SSEC's judgment that "modest" strengths identified under the coordination and continuity factor were offset by weaknesses identified under the experience and staffing factor and that Sterling had not provided the minimum number of past performance surveys. Id. at 3.

The CO decided to conduct discussions with the offerors and established a competitive range that included only [deleted] proposals. AR, Tab 6, Competitive Range Decision, at 3. The proposals of Sterling and the other offerors, all of which were rated as satisfactory, were not included in the competitive range, because the CO concluded that these proposals had no reasonable possibility of receiving award, given their significantly higher prices as compared to the independent government estimate (IGE) and [deleted] overall prices.⁴

This protest followed a pre-award debriefing.

DISCUSSION

Sterling raises numerous arguments challenging the agency's evaluation and competitive range decision. Among other things, Sterling complains that the record does not document any reasoned consideration of the differing technical merit offered by the offerors. Sterling also challenges its marginal rating under the past performance factor, arguing that it submitted four past performance surveys, and not one as stated by the agency. Sterling also complains that the agency's decision to exclude its proposal from the competitive range was based only upon its proposed price, which the RFP indicated was the least important evaluation factor.⁵ Finally, Sterling contends that the IGE is based incorrectly on the actual number of veterans assigned to each facility rather than the estimates used in schedule B.5.

⁴ The IGE for this requirement was estimated to be [deleted]. AR, Tab 2, IGE, at 3.

⁵ Sterling also protests that the VA's consideration of price could not be meaningful because the wage determination provided in RFP amendment 1 was incorrect, and because the RFP's estimates as to future visits and current numbers of veterans were inconsistent. Protest at 10-19; Protester's Comments at 2-5. Because of these improprieties, Sterling claims that offerors' prices may have been based upon differing assumptions. We dismiss these post-award challenges by Sterling as untimely. Our Bid Protest Regulations require protests of alleged solicitation improprieties, such as these, to be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2012).

Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. Federal Acquisition Regulation (FAR) § 15.306(c)(1); D & J Enter., Inc., B-310442, Dec. 13, 2007, 2008 CPD ¶ 8 at 2. The evaluation of proposals and resulting determination as to whether a particular offer is in the competitive range are matters within the discretion of the contracting agency. Chant Eng'g Co., Inc., B-281521, Feb. 22, 1999, 99-1 CPD ¶ 45 at 3; Laboratory Sys. Servs., Inc., B 256323, June 10, 1994, 94-1 CPD ¶ 359 at 2. In reviewing challenges to an agency's competitive range determination, our Office does not independently reevaluate proposals; rather, we examine the evaluation to determine whether it is reasonable. Tri-Services, Inc., B-253608, Sept. 7, 1993, 93-2 CPD ¶ 131 at 2; Educational Computer Corp., B-227285.3, Sept. 18, 1987, 87-2 CPD ¶ 274 at 2. In this regard, a protester's mere disagreement with an agency's evaluation and competitive range judgment does not establish that the agency acted unreasonably. SPAAN Tech., Inc., B-400406, B-400406.2, Oct. 28, 2008, 2009 CPD ¶ 46 at 9.

As an initial matter, we disagree with Sterling's belief that the agency's evaluation of proposals is inadequately documented. Contrary to Sterling's arguments, the evaluators' judgment as to the merits of each proposal is documented in the SSEC's summary evaluation report, which identifies strengths and weaknesses under the evaluation factors and subfactors for each firm's proposal. See, e.g., AR, Tab 5, Summary Evaluation Report, at 17-18 (narrative assessment of Sterling's proposal). With respect to Sterling's proposal the SSEC concluded that Sterling's modest strengths under the coordination and continuity factor were offset by the weaknesses identified under the experience and staffing factor and the fact that Sterling had not provided the minimum number of past performance surveys required by the RFP.⁶ Id. at 3.

The record also does not support Sterling's argument that it should have received a higher rating than marginal under the past performance factor. As noted above, the

⁶ We also find no merit to Sterling's supplemental protest claim that the technical evaluation record does not support [deleted] inclusion in the competitive range. Sterling's arguments again unduly focus on adjectival ratings and merely disagree with the SSEC's assessment. As noted above, the agency performed an in-depth narrative evaluation of [deleted and the other offerors' technical proposals, considering the underlying bases for assigning adjectival ratings. As we have long noted, point scores or adjectival ratings are guides for intelligent decision making in the procurement process. Where the record shows, as it does here, that the evaluators reasonably considered the underlying bases for the ratings in a manner that is consistent with the terms of the RFP, a protester's disagreement with the ratings or point scores assigned essentially is inconsequential. Burchick Constr. Co., B-400342.3, Apr. 20, 2009, 2009 CPD ¶ 102 at 4-5.

SSEC rated Sterling's past performance as marginal because Sterling failed to provide three past performance surveys as required by the RFP and to provide information that would allow the agency to assess the firm's past performance. Id. at 17-18. Sterling complains, however, that it made arrangements to have four past performance surveys submitted to VA and that these references had submitted their surveys by email to the agency. See Protester's Supp. Comments at 11. We find from review of the record that VA received two past performance surveys for Sterling (although the agency only evaluated one of these surveys).⁷ VA denies receiving the other two, and our review of the record indicates that they were misaddressed. See id., exhib. 8, Emails, at 10, 15. Given that Sterling failed to submit the required number of surveys for its past performance and that Sterling did not specifically address the SSEC's conclusion that Sterling did not provide sufficient information to allow the evaluators to assess the firm's past performance, we have no basis to object to the marginal rating of its proposal under this factor.

We also find no merit to Sterling's contention that VA converted this procurement from a best value basis for award to one based upon low price, and technical acceptability. The record actually shows that the CO considered Sterling's and the other offerors' evaluated technical merit and prices in determining which proposals to include in the competitive range. In this regard with respect to Sterling's proposal, the CO found that Sterling's proposed price was substantially higher than that of the [deleted] lowest-price proposals, [deleted]. See AR, Tab 6, Competitive Range Decision, at 3-4; CO's Statement at 7. The CO concluded that, as compared to the two lowest-priced proposals that were retained in the competitive range, Sterling's proposal had no reasonable possibility of receiving award. AR, Tab 6, Competitive Range Decision, at 3. Although Sterling apparently disagrees with this judgment, it has not shown it to be unreasonable.⁸

Sterling also complains that the agency improperly relied on the IGE in determining the competitive range, because, Sterling argues, the IGE was not based upon the estimated quantities provided in the RFP for calculating offerors' overall prices. As noted above, Sterling's proposal was excluded from the competitive range because

⁷ The record shows that the agency overlooked one of Sterling's emailed surveys because the survey did not reach the intended agency addressee, having been directly routed to the agency's archive system. See VA Supp. Submission, July 17, 2012, at 1.

⁸ Sterling also complains that the agency failed to anticipate that Sterling's "final proposal would [have become] competitive," if the agency had conducted discussions with Sterling. Protest at 8. This complaint, however, is also nothing more than disagreement with the agency's judgment that Sterling's proposal would not have a reasonable possibility of being selected for award, even if the agency conducted discussions with the protester.

it had no reasonable possibility of being selected for award as compared to the [deleted] lower-priced offers that were retained in the competitive range.⁹ Therefore, even if we were to decide that the IGE was unreasonably calculated, this alone would not provide a basis to find the agency's competitive range decision unreasonable.

The protest is denied.

Lynn H. Gibson
General Counsel

⁹ Sterling also protests the reasonableness of [deleted] fixed prices, complaining that they are too low. Sterling's argument reflects a lack of understanding as to the distinction between price reasonableness and realism. The purpose of a price reasonableness review in a competition for the award of a fixed-price contract is to determine whether the prices offered are too high, as opposed to too low. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3; WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 4 n.2. Arguments, such as Sterling's here, that an agency did not perform an appropriate analysis to determine whether prices are too low so that there may be a risk of poor performance, concern price realism. C.L. Price & Assocs., Inc., B-403476.2, Jan. 7, 2011, 2011 CPD ¶ 16 at 3; SDV Solutions, Inc., B-402309, Feb. 1, 2010, 2010 CPD ¶ 48 at 4. A price realism evaluation is not required where, as here, a solicitation provides for the award of a fixed-price contract and does not include a requirement for a price realism evaluation. See C.L. Price & Assocs., Inc., supra; WorldTravelService, supra, at 3.