



United States Government Accountability Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Medical Receivables Solution

File: B-409358

Date: March 19, 2014

David S. Cohen, Esq., John J. O'Brien, Esq., Gabriel E. Kennon, Esq., Amy J. Spencer, Esq., and Nicole Picard, Esq., Cohen Mohr LLP, for the protester. Scott N. Flesch, Esq., and Stephanie Magnell, Esq., Department of the Army, for the agency. Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency conducted misleading and unequal discussions, because the agency accepted a price revision from the awardee following discussions, is denied where the record shows that the agency did not expressly restrict the offerors' ability to revise their price in their revised proposals.

DECISION

Medical Receivables Solutions, Inc. (MRS), of Vallejo, California, protests the award of a contract to Infused Solutions, LLC, of Sterling, Virginia, under request for proposals (RFP) No. W91Y TZ-13-R-0098, issued by the Department of the Army, for medical records coding services. MRS contends that the Army's discussions were misleading and unequal because, the protester contends, the agency improperly permitted another offeror to revise its price.

We deny the protest.

BACKGROUND

The RFP was issued on August 14, 2013, as set-aside under the Small Business Administration's section 8(a) program. The solicitation sought medical record coding services, and anticipated award of an indefinite-delivery, indefinite-quantity contract with fixed-price task orders for a base year and four 1-year options. Award was to be made to the offeror who submitted the lowest-priced technically-

acceptable proposal after considering four evaluation factors: (1) compensation and retention plan, (2) management plan/key personnel/training plan¹/quality control, (3) past performance, and (4) price. RFP (conformed) at 209-210. An offeror's proposal had to be rated acceptable under each of the non-price evaluation factors in order to be eligible for award. Id. at 210.

Nine offerors responded to the RFP by the September 13 closing date. Based on the initial evaluation, the Army established a competitive range of six offerors, including MRS and Infused Solutions. The Navy conducted written discussions with each offeror concerning the specific weaknesses and deficiencies in their proposals. Identical letters were sent to offerors on November 18 that, in pertinent part, stated the following:

The Government has completed its initial evaluation of the proposals submitted in response to the subject solicitation and informs you that your proposal **was selected as part of the competitive range determination.**

As such, the Government requests explanations, discussions and/or clarifications of the items addressed in enclosures 1 and 2. In preparing your response, restate each item in the order in which it is given and follow it with your response, and reference the revised sections of your proposal.

All proposal revisions must be fully documented by identifying which volume and factor the changes refer to; changes must be **highlighted**, and in the same format utilized in your original proposal.

Responses and proposal revisions are due **15 November 2013 by 1000 AM Fort Belvoir, VA Local Time.** Responses and proposal revisions not received by that date and time will not be considered and the original proposal will stand.

See, e.g., Agency Report (AR), Tab 16b, MRS Evaluation Notice, at 1 (emphasis in original).

The November 18 evaluation notices, however, did not include specific questions for offerors, and also included an erroneous due date for submissions. The Army therefore provided a subsequent email to each offeror on November 19, which

¹The RFP required a training plan to address the requirements of ICD-10-CM (international classification of diseases, 10th revision, clinical modification), which is a system for classifying medical diagnoses. See <http://www.cdc.gov/nchs/icd/icd10cm.htm>.

provided the specific items for discussions and informed offerors that “Final proposal revisions should be received no later than 10:00 a.m. EST on 25 Nov 2013.” See, e.g., AR, Tab 35, Email, Nov. 19, 2013.

Based on the evaluation of the final proposals, the Army found that MRS submitted the lowest-priced technically-acceptable proposal, with a price of \$34,088,862, and advised MRS on December 13 that its proposal had been selected for award. AR at 6. On December 14, the agency received an email from Infused Solutions, advising that its proposed price in the notice of award was incorrect. Id. The contracting officer reviewed the offerors’ revised proposals and found that the evaluation and award decision had not been based on Infused Solutions’ revised price of \$33,480,139, which was submitted in its final revised proposal. Contracting Officer’s Statement at 3. As a result, the Army revised its selection decision and concluded that Infused Solutions had submitted the lowest-priced technically-acceptable proposal. On December 17, the agency terminated the award to MRS and awarded the contract to Infused Solutions. This protest from MRS followed.

DISCUSSION

MRS argues that the Army’s discussion letter limited offerors’ final proposal revisions to the specific items identified by the agency for discussion with each offeror, and that the agency could not properly accept a price revision from Infused Solutions because this revision went beyond the scope of the agency’s discussions. The protester argues that the Army’s discussions were misleading because they did not reasonably advise offerors that they were permitted to revise their price. The protester further argues that the agency conducted unequal discussions by permitting Infused Solutions to submit a revised price. For the reasons discussed below, we find no merit to the protest.

In general, when an agency opens or reopens discussions with offerors, the offerors may revise any aspect of their proposals, including portions of their proposals which were not the subject of discussions. Velos Inc., et al., B-400500 et al., Nov. 28, 2008, 2010 CPD ¶ 3 at 11. In appropriate circumstances, however, agencies may limit the revisions that offers may make to their proposals following discussions. DAE Corp., B-259866, B-259866.2, May 8, 1995, 95-2 CPD ¶ 12 at 4.

MRS contends that offerors were instructed during discussions to respond to specific questions and to identify the portions of their revised proposals that were changed as a result of discussions; for this reason, the protester argues, the agency effectively limited offerors to revisions tied to the discussion questions. See Protest at 7. We conclude that the protester’s interpretation of the agency’s instructions during discussions is not reasonable. As noted above, the Army’s letter regarding discussions did not contain any specific language limiting offerors to the items that were the subject of the discussions. See AR, Tab 16b, MRS Evaluation Notice, at 1. Furthermore, rather than expressly restricting proposal revisions to the items

for discussion, the November 18 letter directed offerors to reference the revised sections of their proposal that were changed in response to the discussion items. Id. On this record, we do not think that the agency's discussion questions and request for revised proposals limited offerors' ability to revise other parts of their proposals that were not related to the discussion questions--such as price.

MRS also argues that two decisions by our Office demonstrate that the Army improperly accepted Infused Solutions' revised price: DynaLantic Corp., B-234035, May 3, 1989, 89-1 CPD ¶ 421, and Resource Consultants, Inc., B-293073.3, et al., June 2, 2004, 2005 CPD ¶ 131. These decisions, however, do not support the protester's position. In DynaLantic, we sustained the protest because the agency accepted an offeror's revisions to its technical proposal that were outside the scope of the agency's request for revised proposals. DynaLantic Corp., supra, at 3. Although the request for revised proposals did not expressly limit the scope of the proposal revisions, the record established that the agency intended to limit the request for proposal revisions and conveyed this intent to the offerors, and that the protester prepared its proposal with the understanding that the request for revisions was limited in scope. Id. Here, in contrast, the agency does not agree that it intended to limit the scope of discussions, nor did it convey any such intent to the offerors.

In Resource Consultants, we sustained the protest where an agency limited proposal revisions to price, but accepted a revised price from the awardee that effectively revised its proposed technical approach without permitting other offerors to do the same. Resource Consultants, Inc., supra, at 11. Here, there is no evidence in the record that the agency intended to limit proposal revisions, and, as discussed above, the agency's November 18 letter did not establish any ground rules other than that offerors reference the revised sections of their proposals and fully document all other proposal revisions.

In sum, while we understand that the situation here was exacerbated by the Army's initial, but erroneous, decision to award to MRS, we conclude that the Army reasonably accepted Infused Solutions' revised price. We find no basis to object to the award decision.

The protest is denied.

Susan A. Poling
General Counsel