



## Decision

**Matter of:** David Jones, CPA PC

**File:** B-414701

**Date:** August 25, 2017

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David Jones for the protester.

Jason A. M. Fragoso, Esq., Steven E. Devine, Esq., and Michael J. Kraycinovich, Esq., Department of Veterans Affairs, for the agency.

Frank Maguire, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest is sustained where agency unreasonably based its price reasonableness determination on protester's price for a single line item.

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### DECISION

David Jones CPA PC (DJCPA), of Atlanta, Georgia, protests the failure of the Department of Veterans Affairs (VA) to establish a blanket purchase agreement (BPA) with it pursuant to request for quotations (RFQ) No. VA119A-17-Q-0002, for Equal Employment Opportunity (EEO) claims investigations for VA's Office of Resolution Management (ORM).<sup>1</sup> DJCPA argues the agency unreasonably excluded its quotation from consideration for award based on a finding that one of the protester's line item prices was not fair and reasonable.

We sustain the protest.

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<sup>1</sup> ORM provides EEO discrimination complaint processing services to VA employees, applicants for employment, and former employees. Agency Report (AR), Tab 1, Exh. 11, Business Clearance Memorandum (BCM), May 4, 2017, at 2. The BPA for the EEO Investigations requirement will provide contractor support to ensure that discrimination complaints are processed fairly, promptly, and in compliance with governing law. Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 2.

## BACKGROUND

The RFQ, which was set aside for service-disabled veteran-owned small businesses (SDVOSBs), contemplated the establishment of a minimum of seven BPAs. RFQ at 53.<sup>2</sup> The solicitation advised vendors that the acquisition was being conducted in accordance with the procedures of Federal Acquisition Regulation (FAR) Subpart 13.303, and that the procedures of FAR Part 15 did not apply. Id. The RFQ provided for a phase 1 evaluation, in which the vendor's SDVOSB eligibility would be verified, and a phase 2 evaluation, in which the quotations advancing from phase 1 would be evaluated under technical approach, past performance, and price factors to determine which represented the best value to the government. The solicitation advised that in the phase 2 evaluation, technical approach was significantly more important than past performance, and that technical approach and past performance, when combined, were significantly more important than price. Id. at 53-54. The RFQ also advised vendors that to receive consideration for award, a quotation had to be rated no less than satisfactory under the technical approach factor.

The RFQ's price schedule requested unit and extended prices for each of the following five line items in each of five years of performance: individual case, one issue; individual case, per additional issue; individual case, continuing violation; consolidated case, one issue; and consolidated case, per additional issue. Id. at 22-24. Vendors were to insert a not-to-exceed quantity for each line item. The solicitation provided that the government would evaluate price "to determine whether or not it is considered fair and reasonable based on FAR 13.106-3(a)," and that the agency would not establish a BPA with any vendor whose price was evaluated as "questionable for reasonableness." Id. at 54, 62.

DJCPA was one of six vendors that submitted quotations by the specified due date. One of the quotations did not advance to the phase 2 evaluation, and three of the five quotations that did advance were rated as less than satisfactory for the technical approach factor and excluded from further consideration for award. DJCPA's quotation was rated as good under the technical approach factor; DJCPA's past performance was rated as high risk (based on the performance of its proposed major subcontractors); and the protester's price for one of the RFQ's 25 line items was determined "to not be fair and reasonable."<sup>3</sup> BCM at 14, 18, 26. The agency determined that because DJCPA's

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<sup>2</sup> While the solicitation stated that the agency intended to establish a minimum of seven BPAs, it also reserved to the agency "the right to establish as many or as few as determined appropriate based on the result of this competition." Id.

<sup>3</sup> The agency explained its methodology for assessing price reasonableness as follows:

To determine price reasonableness, VA used the unit price for each CLIN [contract line item number] from all offerors and calculated a mean unit price for each CLIN. Using that unit price, VA then established a range of one standard deviation and one-half above the mean unit price for each

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quotation had a price that was not fair and reasonable, it would no longer be considered for award. Id. at 27. The agency selected the only remaining vendor for establishment of a BPA. On May 18, 2017, after receiving notice that it had not been selected to receive a BPA, DJCPA protested to our Office.

## DISCUSSION

The protester challenges the agency's adverse price reasonableness determination, arguing that the agency unreasonably eliminated DJCPA's quotation from further consideration for award "without any discussion of or an acknowledgment of the relationship among the CLINs," and without considering the fact that DJCPA's prices for all but one CLIN were lower than the agency's benchmarks.<sup>4</sup> Protester's Comments at 3. As explained below, we agree with the protester that the agency's price analysis was unreasonable.

The VA maintains that because the RFQ instructed vendors to insert a not-to-exceed quantity for each line item, meaning that vendors were quoting on varied quantities, "price reasonableness was conducted based upon an examination of the unit price for each contract line item number." Agency Response to Protester's Comments at 2. Thus, according to the agency, it was reasonable for it to exclude the protester's quotation from consideration for award on the basis the protester's price for a single line item was high.

We disagree. As noted above, the solicitation did not provide estimated quantities for the various line items, and thus, the agency had no basis upon which to assess the reasonableness of DJCPA's overall price for the CLINs, and instead evaluated price

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CLIN. If the per unit pricing was above the high end benchmark (of one and one [half] standard deviation from the mean unit CLIN price), the CLIN pricing was determined not to be fair and reasonable.

Agency Response to Protester's Comments, July 7, 2017, at 2.

<sup>4</sup> The protester also challenged the agency's price reasonableness determination on the basis that its price for the particular line item in question was in line with General Services Administration schedule pricing for that task from similarly situated vendors. We do not find that this argument provides a basis to sustain the protest. In its initial protest and significant portions of subsequent filings, DJCPA took issue with the agency's rating of its past performance as high risk. We need not address these arguments. While the agency evaluated the protester's past performance as high risk, the solicitation did not provide that quotations rated as high risk for past performance would be excluded from consideration for award, nor does the record show that the agency excluded the protester's quotation from consideration on that basis. Instead, the VA stated that it rejected DJCPA's quotation because its price was "not fair and reasonable." BCM at 27.

reasonableness at the line item level. Before rejecting DJCPA's quotation on the basis that a single line item price was high, however, the agency was required to also consider the risk that this single line item price would result in an unreasonably high price overall, or consider whether the single line item price presents some other risk to the government, as in the context of unbalanced prices. See *Triumvirate Envtl., Inc.*, B-406809, Sept. 5, 2012, 2012 CPD ¶ 244 at 5. Here, the VA engaged in no analysis whatsoever to assess whether there was a risk that the protester's high price on the single line item in question would result in the government paying an unreasonably high price for performance of a typical order under the BPA. In our view, it was not reasonable to exclude the protester's quotation from further consideration without performing such an analysis, and on that basis, we sustain the protest.

## RECOMMENDATION

We recommend that VA reevaluate the reasonableness of DJCPA's price quotation consistent with this decision, and, taking the results of that evaluation into account, reconsider whether to establish a BPA with the protester. We also recommend that the protester be reimbursed its costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling  
General Counsel