



Decision

Matter of: eReceivables, Inc.

File: B-416773

Date: December 12, 2018

Joseph L. Fuller, Esq., Kutak Rock LLP, for the protester.
Aleia Barlow, Esq., and Ifeyinwa Anoliefo, Esq., Department of Veterans Affairs, for the agency.
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DIGEST

Protest challenging solicitation requirements as unduly restrictive is denied where the record supports the agency's position that the requirement is reasonably necessary to meet the agency's needs.

DECISION

eReceivables, Inc., of Coral Springs, Florida, challenges the terms of request for proposals (RFP) No. 36C77618R0051, issued by the Department of Veterans Affairs (VA), for recovery audit services. eReceivables argues that the solicitation's prohibition on using auto-generated mass mailing or appeal requests and the solicitation's requirement to prepare a feasibility assessment report do not reasonably relate to the agency's needs and are unduly restrictive of competition.

We deny the protest.

BACKGROUND

The VA is authorized to seek reimbursement from third-party health insurers (TPP) for the cost of non-service-connected medical care furnished to eligible veterans who have commercial insurance coverage. RFP¹ at 18; see also 38 U.S.C. § 1729; 38 C.F.R. Parts 17.101 and 17.106. The VA's consolidated patient account centers (CPACs)

¹ The solicitation was amended twice. All citations to the solicitation are to the final version as amended.

ensure that VA collects revenue from commercial health insurance carriers for non-service connected care provided to insured veterans. RFP at 18. There are seven regional CPACs located nationwide that provide revenue cycle management to the 18 Veterans Integrated Service Networks and their associated VA medical centers (VAMCs). Id. The agency states that this procurement is for services to actively review insurance carrier payments to determine appropriate collections and, if underpayments are identified, to pursue the collection of the underpaid amount. Agency Report (AR), Contracting Officer's Statement at 2.

The RFP, issued on August 15, 2018 and set aside based on an order of priority as established in 38 U.S.C. § 8127,² under Federal Acquisition Regulation (FAR) parts 12 and 15, contemplated the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract with a 3-year ordering period. Id. at 3, 70, 73. The contract included one fixed-price contract line item number (CLIN) for a feasibility assessment report³ and a fixed contingency-fee CLIN for recovery audit services.⁴ Id. at 16-17, 70. Award is to be made on a best-value tradeoff basis considering the following factors in descending order of importance: technical capability, price, and subcontracting plan. Id. at 75.

As relevant here, the solicitation required the contractor to provide a feasibility assessment report based on an analysis of all collected/closed TPP commercial health insurance claims from all seven regional CPACs and their associated VAMCs for the prior fiscal year (FY) to determine feasibility for all additional potential collections. Id. at 16-17, 19, 21-22. This report is to identify categories of claims that are deemed to be actionable, and to include: recommendations for types of claims to be forwarded to the contractor for the performance of recovery audit services; the estimated amount of additional recovery; and the basis for additional recovery. Id. at 21-22. The solicitation also contemplated that the contractor and agency would agree upon the types of appropriate claims for which the contractor would perform recovery audit services. Id. at 22.

The solicitation further contemplated that the agency would issue separate task orders for each CPAC for a period not to exceed 12 months during the 3-year ordering period for the performance of recovery audit services, contingent upon the results of the feasibility assessment report. Id. at 17, 19, 22, 26-28. In this regard, the solicitation stated that twice a month the agency would provide the contractor a list of claims that

² The order of priority is: service-disabled veteran-owned small business concerns; veteran-owned small business concerns; small business concerns with historically underutilized business zone small business concerns and 8(a) participants having priority; and large business concerns. RFP at 79.

³ The feasibility assessment report was to be provided in CLIN 0001 and was the minimum order quantity for the contract. Id. at 16.

⁴ The solicitation explains that the contractor will receive payment based on the percentage of the amount the contractor recovers on a claim. Id. at 17, 19.

the agency determined would be appropriate for the contractor to review as part of the recovery effort. Id. at 22, 26-28. As relevant here, among the characteristics of these claims included claims that met the criteria agreed upon by the agency and contractor in the feasibility assessment report. Id. Finally, of particular relevance here, the solicitation also specifically stated that “[t]he contractor shall not auto-generate mass mailing or appeal requests.”⁵ Id. at 19.

Prior to the due date for the submission of initial proposals, eReceivables filed this protest.

DISCUSSION

The protester argues that the agency’s requirement for a feasibility assessment report and prohibition on the use of auto-generated mass mailing or appeal requests are not reasonably necessary to meet the agency’s needs and therefore are unduly restrictive of competition.⁶ Protest at 1, 15-19. Specifically, the protester argues that the prohibition on the use of auto-generated mass mailing or appeal requests prevents eReceivables from submitting a proposal because it offers a third-party claims collection approach that pursues all payment balances by generating mass mailings of appeals. Id. at 12, 15. The protester further argues that the solicitation should require all contractors to use this type of approach, which, in eReceivables’ view, is a superior approach. Id. at 17. The protester further contends that the use of auto-generated mass mailing or appeal requests would eliminate the need for a feasibility assessment report to identify claims with additional collection potential. Id. at 17-19.

In response, the agency explains that the feasibility assessment report and the prohibition on the use of auto-generated mass mailings and appeal requests are both reasonably necessary to meet the agency’s needs. In support, the agency provides a

⁵ The solicitation also stated that, prior to submitting any correspondence to TPPs, the contractor will provide copies of correspondence templates for agency review and approval. RFP at 22.

⁶ In filing and pursuing its protest, eReceivables has made arguments that are in addition to, or variations of, those discussed below. We have considered all of the protester’s assertions and find no basis to sustain its protest. For example, eReceivables argues that the requirement for the feasibility assessment report is an unnecessary expenditure of appropriated funds and that the prohibition on the use of auto-generated mass mailings or appeals is contrary to congressional directives to the agency. See Protest at 14, 19-20; Comments at 12-13. Our bid protest jurisdiction extends to violations of procurement laws and regulations, and does not generally extend to questions of fiscal law. 31 U.S.C. § 3552; Pitney Bowes, Inc., B-416220, B-416220.2, July 11, 2018, 2018 CPD ¶ 263 at 3; NTELX, Inc., B-413837, Dec. 28, 2016, 2017 CPD ¶ 13 at 2-3 n.2. Accordingly, we dismiss these protest grounds.

declaration from the Director of Payer Relations, Revenue Operations, Office of Community Care, who oversees the team responsible for developing and managing business relationships with health insurance carriers across the country on behalf of the Veterans Health Administration. See AR, Tab 2, Declaration of Director of Payer Relations.

The agency states that the VA currently collects approximately 95 percent of all available collections through its own collection process.⁷ Id. at 3. The agency explains that its high collection ratio is attributable to the use of insurance carrier payer agreements, an approach that identifies billable services and assigns reimbursement rates. Id. at 4. In this regard, the agency represents that 60 percent of TPPs pay the agency in accordance with the agreement on initial collection (i.e., without any agency involvement). Id. at 5. The agency also explains that the agency's standardization of processes has yielded improvements in collection performance and, as a result, the types of claims that could potentially have any remaining collectable revenue are not expected to vary from year-to-year. Id. at 4. As a result, the agency determined that a feasibility assessment report was required to allow the contractor to gain an understanding of the agency's current collection processes and results, and to have visibility into the types of claims that have any remaining collectable revenue, which would be the focus of the recovery audit services. Id. The agency explains that this approach was designed, inter alia, to maximize the benefit to the VA and ensure that resources were expended in the appropriate areas by both the contractor and the agency. Id.

The agency represents that the collaborative relationship between TPPs and the agency is imperative to limit the number of appeals occurring from denied or improperly paid claims. Id. In this regard, the agency states that if it were to permit the use of mass mailing, all work performed by the agency to develop and maintain those relationships would be negated. Id. The agency also provided a declaration from an accounts receivable manager involved in prior contracts that utilized mass mailing, detailing issues experienced with the use of mass mailing. Id. at 5; see also AR, Tab 3, Declaration of Accounts Management Policy Analyst. These issues included several insurance carriers informing the agency that all accounts-receivable work would cease as well as the acceptance of follow-up phone calls from the agency if the agency did not stop the contractor from inundating them with "canned" appeals letters, which provided no justification for additional payment and created an undue burden of work. Id. In this

⁷ The agency explains that prior to FY 18, it reported collection performance based on the percentage of collections to total billings, which averaged between 35 to 40 percent in the previous five years. AR, Tab 2, Declaration of Director of Payer Relations at 2. Beginning in FY 18, the agency implemented a revised method, the net collection ratio, to more accurately report collection performance by taking total billings and subtracting those amounts that are not collectable, such as payer discounts, and other categories of payment that the agency is prohibited by statute from collecting, such as copays or deductibles. Id. at 2-3.

regard, the agency states that the insurance carriers simply responded by sending a denial letter that provided no additional review or consideration of the claim, which imposed additional unnecessary work on the agency's staff to review and process the claim. Id.

It is within a contracting agency's discretion to determine its needs and the best method to accommodate them, and we will not question an agency's determination of its needs unless that determination has no reasonable basis. Salient Fed. Sols., Inc., B-410174, Nov. 6, 2014, 2014 CPD ¶ 350 at 2. A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. LexisNexis, B-413612, Nov. 29, 2016, 2016 CPD ¶ 356 at 4-5.

Agencies must specify their needs in a manner designed to permit full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy the agencies' legitimate needs or as otherwise authorized by law. 41 U.S.C. § 3306(a). Where a protester challenges a specification or requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. Remote Diagnostic Techs., LLC, B-413375.4, B-413375.5, Feb. 28, 2017, 2017 CPD ¶ 80 at 3-4. Where an agency reasonably identifies its needs and allows offerors the opportunity to meet those needs, the fact that a solicitation's requirements may be burdensome or even impossible for an offeror to meet does not make them objectionable, if the requirements properly reflect the agency's needs. TransAtlantic Lines, LLC, B-411846.2, Dec. 16, 2015, 2015 CPD ¶ 396 at 9.

Here, we find that the agency has established that its prohibition on auto-generated mass mailings and appeals is reasonable. Although the protester raises a number of arguments disagreeing with the agency, this disagreement does not show that the agency's judgment as to the agency's need is unreasonable.

For example, in its comments, eReceivables asserts that the only argument the agency makes to support its prohibition on the use of auto-generated mass mailing and appeals is that these practices could damage the collaborative relationship the agency has established with TPPs. Comments at 6. However, eReceivables claims that this argument is supported by no contemporaneous documents, and the protester attempts to refute the agency's explanation through the submission of its own declaration from its president, in addition to several emails from 2006. Id. at 3-11; see also id., attach. 1, Declaration of eReceivables' President.

The protester contends that the declaration provided by the agency from an accounts receivable manager involved in prior contracts is not part of the contemporaneous record, and should be given little weight. Id. at 5-7. We disagree. The declaration is a post-protest explanation that our Office will consider. See Remote Diagnostic Techs., LLC, supra at 4-5; Erickson Aero Tanker, B-411306.2, B-411306.5, July 29, 2015, 2015 CPD ¶ 226 at 9 n.6. Here, we also find the submitted declaration credible, particularly

since the protester has failed to present any argument that would call into question the substance and credibility of the declaration. eReceivables' declaration reflects nothing more than the declarant's own opinion with regard to the use of the auto-generated mass mailings and appeals between 2005 and 2008, and reflects a lack of knowledge about any issues the agency may have had with the insurance carriers as a result of the use of mass mailing of appeals. See generally Comments, attach. 1, Declaration of eReceivables' President; see also id. ("I am not aware of any instances in which an insurer threatened to stop accepting follow-up calls or cease accounts receivable work for VA because of any inconvenience caused by eReceivables' automated appeals process."). Similarly, the emails that the protester provided, which purport to rebut the agency's concerns that the use of auto-generated mass mailings and appeals could jeopardize its collaborative relationship with TPPs, do not refute the agency's specific explanations. Id., exhs. 1-5 (various emails).⁸

A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them, without more, does not show that the agency's judgment is unreasonable. Protein Scis. Corp., B-412794, June 2, 2016, 2016 CPD ¶ 158 at 2. Instead, we find that the agency's explanation for its restrictive solicitation provision withstands logical scrutiny and is rational. Accordingly, we deny the protester's argument that the prohibition on the use of auto-generated mass mailing or appeals is not necessary to meet the agency's needs and is unduly restrictive of competition. Given this conclusion, we need not address the protester's objections to the agency's requirement for a feasibility assessment report, i.e., that this report would not be necessary if auto-generated mass mailing or appeals were allowed.

The protest is denied.

Thomas H. Armstrong
General Counsel

⁸ For example, one email, which summarizes a conversation between the contractor and the agency, indicated that the agency had a conversation with two insurance providers and that "[t]hey told her to tell us to stop sending them appeals." Comments, attach. 1, Declaration of eReceivables' President, exh. 5.