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Decision

Matter of: Coventry Healthcare Workers' Compensation, Inc.

File: B-417237.5

Date: January 29, 2021

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Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's proposal and ultimate source selection decision is denied where record shows that agency's evaluation was reasonable and in accordance with the terms of the solicitation and applicable statutes and regulations.

DECISION

Coventry Healthcare Workers' Compensation, Inc., of Downers Grove, Illinois, protests the award of a contract to PMSI, LLC d/b/a Optum Workers' Compensation Services of Florida, of Tampa, Florida, under request for proposals (RFP) No. 1605DC-18-R-00020, issued by the Department of Labor (DOL) for pharmacy benefits management services. Coventry argues that the agency miscalculated its proposal and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

This is our second occasion to consider in detail the propriety of the agency's actions in connection with this acquisition. Optum filed an earlier protest challenging the agency's award of a contract to Coventry, and we sustained that protest, finding that the agency had miscalculated the offerors' proposals and, because of that miscalculation, had made

an unreasonable source selection decision. *PMSI, LLC d/b/a Optum Workers' Compensation Services of Florida*, B-417237.2, *et al.*, Jan. 29, 2020, 2020 CPD ¶ 63. After our earlier decision, the agency amended the solicitation and requested revised proposals. Based on those activities, the agency selected Optum for award of the contract, and Coventry filed the instant protest.

As we discussed in our earlier decision, the RFP contemplates the award, on a best-value tradeoff basis, of a fixed-price contract to be performed over a base year and four 1-year options. The RFP seeks pharmacy benefits management services to provide pharmacy benefits to federal employees with work-related injuries or illnesses that have accepted workers' compensation. Offerors were advised that DOL would evaluate proposals considering price and two non-price considerations, technical and past performance. RFP at 107.¹ The technical factor² was significantly more important than past performance and price collectively, as well as significantly more important than price alone; the past performance factor was more important than price; and the technical and past performance factors collectively were significantly more important than price. *Id.* The RFP further provided that the agency would evaluate prices for reasonableness.³

In the wake of its corrective action, the agency received a number of proposals and, after evaluating proposals, engaging in discussions, and soliciting, obtaining and evaluating final proposal revisions, DOL assigned the following ratings to the Coventry and Optum proposals:

¹ Except as otherwise noted, all references to the RFP are to the conformed version of the solicitation issued with amendment No. 0005 found in the agency report (AR), exh. 6a.

² The technical factor included five subfactors listed in descending order of importance: understanding of the requirement, corporate experience, start-up plan/phase-out plan, key personnel, and quality control plan. RFP at 107-108. In evaluating proposals under the technical factors and subfactors, DOL assigned adjectival ratings of outstanding, good, acceptable, marginal or unacceptable. AR, exh. 13, Technical Evaluation Report at 5. DOL assigned low risk ratings to Coventry and Optum under the past performance factor (which is not at issue here). AR, exh. 14, Source Selection Decision Document (SSDD) at 26.

³ The principal products to be provided under the resulting contract are prescription drugs and medical equipment. Offerors were required to negotiate pricing with pharmacies, drug manufacturers and other entities, and their pricing took the form of net proposed prices/discounts charged to the government. RFP at 106. (The revenue generated for the contractor is comprised of the difference between the prices negotiated with pharmacies, drug manufacturers and other entities, and the net proposed prices/discounts charged to the government. *Id.*) To arrive at total prices, DOL used the net proposed prices/discounts and multiplied those figures by estimated monetary amounts that were included in the RFP. See RFP at 56; AR, exh. 8d, RFP amend. No. 0007, Discount Calculation Workbook.

	Optum	Coventry
Technical	Outstanding	Outstanding
Understanding the Requirement	Outstanding	Outstanding
Corporate Experience	Outstanding	Outstanding
Start-Up/Phase Out	Outstanding	Outstanding
Key Personnel	Outstanding	Outstanding
Quality Control	Good	Acceptable
Past Performance	Low Risk	Low Risk
Price	\$549,559,715	\$569,893,999

AR, exh. 14, SSDD, at 26. Based on these evaluation results, DOL selected Optum, concluding that its slightly superior technical proposal, combined with its lower evaluated price, represented the best overall value to the government. *Id.* at 48-49. After being advised of the selection decision and requesting and receiving a debriefing, Coventry filed the instant protest.

DISCUSSION

Coventry's protest involves just a single issue relating to a single feature of its proposal that was evaluated by the agency under the understanding the requirement subfactor of the technical evaluation factor. By way of background, the RFP, as amended, required offerors to provide drug utilization review (DUR) services. AR, exh. 8e, RFP, amend. No. 0007, attach. 7, Performance Work Statement (PWS) Revision. These services are designed to save money for the government over time, and to improve patient outcomes through better drug therapy management. The RFP contemplates that the successful contractor will provide DUR services during three broad phases of drug therapy: prospective (DUR services to be provided in advance of medication being dispensed); concurrent (ongoing DUR services aimed at monitoring a patient's drug therapy while it is being administered); and retrospective (DUR services provided after the patient has received their drug therapy). These services may be further divided between automated DUR services and clinical DUR services. Coventry's protest concerns a prospective automated DUR service offered in its proposal called the price opportunist platform (POP).

As Coventry describes it, the POP essentially is an algorithm that screens pharmaceutical products and medical supplies that are new, with a view toward identifying (and ultimately blocking from inclusion in the agency's formulary) products that are overpriced compared to other similar products. The example Coventry gives is a pre-packaged first-aid kit that costs \$300, which would be distinguished from a set of the constituent components making up the first-aid kit (such as bandages, antibiotic cream, etc.) that would cost far less. In Coventry's example, the constituent products could be obtained for \$50 compared to the \$300 cost for the pre-fabricated kit.

Coventry's sole basis for protest is that the agency failed to assign a monetary value to the savings that would be occasioned by the agency's use of the POP in performing its

technical evaluation, with the result that the agency's source selection was skewed by what Coventry describes as Optum's 'illusory' price advantage. (Coventry insists that the agency's technical evaluation is flawed, and that the assignment of a monetary value to its POP during the price evaluation would have been improper in light of the RFPs price evaluation provisions.) According to Coventry, had the agency properly monetized its POP, it would have concluded that, in fact, Coventry's proposal was the less expensive--and by extension the better value--alternative compared to Optum's proposal.

We find no merit to Coventry's protest. In reviewing challenges to an agency's evaluation of proposals, our Office does not substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation scheme and applicable statutes and regulations. *CDO Technologies, Inc.; Abacus Technology Corporation, B-418111 et al.*, Jan. 14, 2020, 2020 CPD ¶ 26 at 5. We have no basis to object to the agency's evaluation here for the reasons advanced by Coventry.

First, and most importantly, nothing in the RFP's technical evaluation scheme contemplates that the agency would "monetize" any aspect of an offeror's technical approach. All parties agree that the protester's challenge is to the agency's evaluation under the technical evaluation factor, and further that the understanding of the requirement subfactor was the appropriate place for the agency to consider the offerors' responses to the requirement for DUR services.

This evaluation subfactor, in its entirety, provides as follows: "UNDERSTANDING OF THE REQUIREMENT--The Government will evaluate the offeror's understanding of the work to be performed in accordance with Part 5 of the PWS and responses to the items laid out in the FAR [Federal Acquisition Regulation] 52.212-1 ADDENDUM." RFP at 108. Simply stated, there is nothing in the language of the applicable evaluation subfactor that suggests that the agency would "monetize" the value of (or calculate the cost savings associated with) any offeror's proposed DUR services program as part of

its technical evaluation.⁴ It follows that any effort on the part of the agency to perform such an exercise would have been improper in light of the RFP's evaluation scheme.⁵

Second, the record shows that the agency considered the benefit of Coventry's POP and gave its proposal full credit for that feature during its technical evaluation and source selection decision. In this connection, the record shows that the evaluators found that Coventry's POP tool contributed to the assignment of two (out of 14 identified) significant strengths assigned to the firm's proposal. AR, exh. 13, Technical Evaluation Report, at 12-17.

In addition, the selection official expressly considered the benefit of Coventry's POP tool in making the selection decision, but concluded--correctly--that the cost impact of Coventry's POP was too speculative, and that the evaluation of any such cost impact was not contemplated by the RFP's price evaluation factor. AR, exh. 14, SSDD, at 41. He also ultimately found that Coventry's POP tool, while providing potential value to the government, did not provide a basis for finding that the Coventry proposal was superior to the Optum proposal under the understanding of the requirement subfactor. *Id.* at 43, 49.

Finally, although Coventry contends that the cost savings associated with its POP tool is readily quantifiable, in fact, the record shows that even Coventry itself cannot settle on a

⁴ Throughout its pleadings, Coventry makes reference to various other provisions of the solicitation (such as portions of the PWS) in support of its argument that the agency was required to "monetize" the potential savings associated with its POP. However, these provisions do not govern the requirements relating to the agency's evaluation of proposals. While a solicitation's instructions or other provisions may establish additional informational, technical, administrative, or performance requirements, such requirements may not properly be considered in connection with an agency's evaluation of proposals unless those additional considerations are also specified as a basis for proposal evaluation. See *McCann-Erickson USA, Inc.*, B-414787, Sept. 18, 2017, 2017 CPD ¶ 300 at 3-4 (requirements of RFP's instructions to offerors do not provide a basis for eliminating proposal from consideration where provisions were not part of the evaluation scheme); *Savannah River Technology & Remediation, LLC; Fluor Westinghouse Liquid Waste Services, LLC.*, B-415637, *et al.*, Feb. 8, 2018, 2018 CPD 70 at 8 (compliance with solicitation's performance work statement is a matter of contract administration and those same provisions did not require the agency to perform lifecycle cost evaluation of a proposal).

⁵ To the extent that Coventry's protest can be viewed as an assertion that the RFP's technical evaluation scheme was required to include consideration of the potential cost impact of one or another technical feature, its protest is untimely. Our Bid Protest Regulations require that any challenge to an apparent solicitation impropriety be filed no later than the deadline for submission of proposals. 4 C.F.R. § 21.2(a)(1). Since Coventry's protest was filed well after that time, any such argument is untimely at this juncture.

firm figure for the potential value of this feature. In this connection, Coventry submitted an affidavit from its pharmacy benefits manager with its initial protest in which he calculated the potential benefit of the POP tool as resulting in approximately \$33 million in savings over the life of the contract. First Affidavit of Coventry's Pharmacy Benefits Manager, Oct. 28, 2020.

This same individual prepared a second affidavit that was submitted with Coventry's comments in response to the agency report. In this second affidavit, Coventry's pharmacy benefits manager calculated the potential savings resulting from the Coventry POP tool as resulting in approximately \$77 million over the life of the contract. Second Affidavit of Coventry's Pharmacy Benefits Manager, Dec. 10, 2020. These widely diverging calculations only serve to reinforce the agency's contemporaneous conclusion that any potential cost benefit resulting from Coventry's POP tool is too speculative to be quantified or "monetized."

In sum, we conclude that the RFP did not contemplate an analysis of the potential cost savings associated with Coventry's POP tool. We also conclude from the record that the agency gave appropriate consideration to Coventry's POP tool during its technical evaluation of proposals and source selection decision. On this record, we have no basis to object to the agency's actions for the reasons advanced by the protester.

The protest is denied.

Thomas H. Armstrong
General Counsel