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## Decision

**Matter of:** Academy Medical, LLC

**File:** B-418223.3

**Date:** October 7, 2020

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Julie M. Nichols, Esq., Roeder, Cochran, Phillips, PLLC, for the protester.  
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### DIGEST

Protest that agency improperly excluded protester from the competitive range is denied where record shows that price evaluation was reasonable and consistent with the solicitation's evaluation criteria.

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### DECISION

Academy Medical, LLC, a service-disabled veteran-owned small business (SDVOSB), of West Palm Beach, Florida, protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. 36C10G19R0050, issued by the Department of Veterans Affairs (VA), for the distribution and supply management of medical, surgical, dental, and laboratory supplies to VA medical centers (VAMCs) and other governmental agencies (OGAs). The protester argues that the agency's pricing methodology was unreasonable and that the agency improperly eliminated the protester from the competitive range.

We deny the protest.

### BACKGROUND

On September 27, 2019, the VA issued the solicitation, on an unrestricted basis, under the procedures of the Federal Acquisition Regulation (FAR) parts 12 and 15. Agency

Report (AR), Tab 5, RFP & amends. at 1, 137.<sup>1</sup> The solicitation sought proposals to support the Medical/Surgical Prime Vendor (MSPV) 2.0 program by providing distribution and supply management services for all required medical, surgical, dental, and laboratory supplies in the Veteran Integrated Service Networks (VISNs).<sup>2</sup> *Id.* at 177. The solicitation advised that one fixed-price, indefinite-delivery, indefinite-quantity contract would be awarded to a prime vendor (PV) and alternate PV for each VISN for a 3-year base period with two 3-year option periods. *Id.* at 86, 130, 139. Each VISN is an individual contract line item number (CLIN). The due date for proposals was October 28. *Id.* at 1.

On October 25, Academy Medical filed a pre-award protest with our Office challenging the solicitation's terms and arguing the VA unreasonably failed to set aside any VISN for SDVOSBs or veteran-owned small businesses (VOSBs). *Academy Medical, LLC*, B-418223, B-418223.2, Jan. 31, 2020, 2020 CPD ¶ 44. We sustained the protest and, based on our recommendations, the VA amended the solicitation to set aside the CLINs associated with VISNs 1, 2, 4, 5, 6, 7, 8, 10, 17, and 22 for small business concerns. RFP & amends. at 76, 78. All other VISNs will be awarded pursuant to an unrestricted competition. *Id.* at 78. The solicitation closed on March 6, 2020. *Id.* at 76.

Under the tiered evaluation for the set-aside CLIN/VISNs 1, 2, 4, 5, 6, 7, 8, 10, 17, and 22, proposals are to be evaluated in the following order of priority: (1) SDVOSBs, (2) VOSBs, (3) all other small business concerns, and (4) other than small businesses. *Id.* at 123-24. If a sufficient number of awards cannot be made at the first tier, proposals at the next lower tier will be evaluated until a sufficient number of awards can be made. *Id.* at 123.

The RFP provides for contract award on a best-value tradeoff basis, with the best value for each VISN determined independently. *Id.* at 124. Proposals are to be evaluated considering the following four factors: technical approach, price, past performance, and veterans' involvement. *Id.* at 136. The technical approach factor is significantly more important than price, which is slightly more important than past performance, which is slightly more important than the veterans' involvement factor. *Id.* at 136-37. When combined, all non-price evaluation factors are significantly more important than price. *Id.* at 137.

The solicitation provides that the VA will evaluate price proposals to determine whether the proposed fixed prices are fair and reasonable in accordance with FAR 15.404-1(b). *Id.* at 141. Total evaluated price for each proposal is to be calculated by applying the

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<sup>1</sup> Citations to the record are to the numbered pages provided by the agency in its report, unless otherwise noted.

<sup>2</sup> VISNs are comprised of groups of VAMCs and OGAs within a geographical area. RFP & amends. at 177. As of March 1, 2019, there are 18 non-consecutively numbered VISNs. *Id.* at 231.

offeror's proposed fixed price (percentage/flat fee) to the respective CLIN/VISN projected annual medical/surgical supply spend for the MSPV 2.0 program. *Id.* Proposals with a lower total evaluated price will be evaluated more favorably under this evaluation factor. *Id.*

The VA received multiple proposals from SDVOSBs (tier 1) for the set-aside CLIN/VISNs, including a proposal from Academy Medical as the PV for eight VISNs (1, 2, 4, 5, 6, 8, 10, and 17), and as the alternate PV for two VISNs (7 and 22).<sup>3</sup> AR, Tab 6; Proposal at 598; AR, Tab 8, Business Clearance Memo. at 69-77. After evaluating the tier 1 SDVOSB proposals, the VA determined that none of the proposals would result in an award that is the best value to the government and the VA dissolved the SDVOSB set-aside. *Id.* at 100.

Academy Medical received a marginal rating for its technical proposal and a moderate risk for its past performance; the agency did not assess Academy Medical's proposal under the veterans' involvement evaluation factor as this factor does not apply to SDVOSB offerors. *Id.* at 24, 77, 90. For every CLIN/VISN Academy Medical proposed as the PV, the VA determined its pricing was not fair and reasonable because the pricing was significantly higher than the independent government cost estimate (IGCE).<sup>4</sup> *Id.* at 70-77.

Based on Academy Medical's ratings for non-price factors and its proposed prices, the VA concluded that it could not award Academy Medical any CLIN/VISNs and its proposal could not be made awardable through discussions. *Id.* at 92-99. Therefore, the VA notified Academy Medical that it was eliminated from further consideration. AR, Tab 11, Relevant Post-Offer Correspondence Between Agency & Protester at 11. Following a written pre-award debriefing, Academy Medical filed this protest.

## DISCUSSION

Academy Medical raises several arguments challenging the agency's price evaluation and Academy Medical's exclusion from the competitive range. The protester contends that the agency's evaluation of its technical and past performance proposals was unreasonable and improper. The protester also argues the agency's price reasonableness methodology was unreasonable because the agency improperly relied

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<sup>3</sup> Academy Medical proposed both individual and bundled pricing for VISNs 1, 2, 4, 5, 6, and 17. AR, Tab 6; Proposal at 600. Academy Medical offered bundled pricing (a 1 percent to 3 percent discount from the proposed VISN price) if it was awarded contracts for three or more VISNs. *Id.*

<sup>4</sup> Academy Medical does not protest its elimination from the competition with regard to CLIN/VISNs 7 and 22; therefore, we do not discuss these CLIN/VISNs further. Protest at 1-2 n.1.

on a flawed IGCE to evaluate offerors' price proposals. We have considered Academy Medical's protest grounds and find that none furnish a basis to sustain the protest.<sup>5</sup>

At the outset, we conclude that Academy Medical abandoned the challenges to its technical and past performance evaluations raised in its protest. It is well-settled that where an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references or restates the original allegations without substantively rebutting the agency's position, the protester fails to provide us with a basis to conclude that the agency's position is unreasonable, and as a result, we consider the protester to have abandoned the assertion. *The Green Tech. Group, LLC*, B-417368, B-417368.2, June 14, 2019, 2019 CPD ¶ 219 at 8; *Earth Res. Tech., Inc.*, B-403043.2, B-403043.3, Oct. 18, 2010, 2010 CPD ¶ 248 at 6.

Here, the record reflects that while the VA thoroughly addressed each protest allegation Academy Medical raised with a detailed factual discussion and legal analysis, Academy Medical specifically declined to respond to the agency's responses regarding its technical and past performance evaluation. Comments at 6 n.1. The protester acknowledged that the VA spent "considerable time addressing the technical and past performance evaluation" in the agency report and reasons that it does not need to "delve into those subjects" because the agency report demonstrates that the protester was only excluded from the competition because of the agency's flawed price evaluation. *Id.* The protester's only response to the agency report with regard to the technical and past performance evaluations is to "continue to maintain that those evaluations were flawed for the reasons stated in the protest." *Id.* Because the protester failed to respond to or rebut substantively the agency's responses, we consider the non-price evaluation allegations abandoned and do not consider them further.

Academy Medical contends that the VA improperly excluded its proposal from the competitive range based on the VA's unreasonable determination that the protester's price was too high. Protest at 2, 37; Comments at 6. Academy Medical asserts that the VA relied on a flawed IGCE to assess price reasonableness. Protest at 30-38. Academy Medical complains that there were other more relevant and appropriate techniques available that the VA should have used to evaluate price instead of comparing its price to an IGCE. Protest at 32-34. Furthermore, Academy Medical argues that the VA's IGCE is unreasonable because it reflects pricing from large business concerns, which does not accurately reflect the higher costs small businesses will incur to perform the same contract. Protest at 31, 34-38.

A price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment by the contracting officer that we will question only

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<sup>5</sup> While our decision does not address every argument raised, we have considered all Academy Medical's allegations, and based on our review of the record, we find no grounds on which to sustain the protest.

where it is unreasonable. *AAR Airlift Group, Inc.*, B-414690 *et al.*, Aug. 22, 2017 2017 CPD ¶ 273 at 9. The FAR permits the use of various price analysis techniques and procedures to ensure fair and reasonable prices, including the comparison of proposed prices received in response to the solicitation to each other or to an independent government estimate. FAR 15.404-1(b)(2); *Comprehensive Health Servs., Inc.*, B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 8. The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. *Advanced Sys. Tech. & Mgmt., Inc.*, B-291529, Dec. 20, 2002, 2002 CPD ¶ 219 at 4.

We do not find anything unreasonable about the pricing methodology the agency used to assess price reasonableness. While the protester broadly asserts that the agency's choice to compare proposed prices to an IGCE in the price evaluation was improper because it was not one of two preferred methods set forth in FAR 15.404-1(b), the protester has failed to demonstrate any flaw in the agency's methodology or otherwise establish that the agency did not have the discretion to use the IGCE.

We also do not agree that using an IGCE comparison was generally unreasonable or inappropriate in light of the competition being conducted. The solicitation here informed offerors that the agency would conduct a price analysis using one or more of the techniques set forth in FAR 15.404-1(b). RFP & amends. at 141. Section 15.404-1(b) of the FAR includes a variety of price analysis techniques, including comparisons to the pricing provided by other offerors, comparisons to historical pricing, and comparisons to the IGCE. The record demonstrates that the VA initially attempted to compare offerors' prices for each CLIN/VISN but "due to significant variances in the pricing proposed by all SDVOSB offerors," competitive prices could not be established and the VA determined that the IGCE, which was itself based on historical pricing, was a better yardstick by which determine whether proposed prices were fair and reasonable. AR, Tab 1, Contracting Officer's Statement (COS) at 27-28; AR, Tab 2, Memorandum of Law at 6; AR, Tab 8, Business Clearance Memo. at 68-69. This methodology is entirely consistent with the solicitation's evaluation criteria and FAR 15.404-1(b), and is unobjectionable. Moreover, Academy Medical's identification of alternative price evaluation methods available to the agency does not establish that the price evaluation was unreasonable. See *Hughes Georgia, Inc.*, B -272526, Oct. 21, 1996, 96-2 CPD ¶ 151 at 7.

The protester also asserts that the IGCE that the agency relied upon was unreasonable. Protest at 37; Comments at 1-5, 13-21. We have reviewed the record and we do not agree. The record demonstrates that the IGCE was developed using historic pricing from prior VA MSPV contracts that includes CLINs performed by small businesses as well as other agency MSPV contracts for the same or very similar services to those being solicited here. COS at 31; AR, Tab 8, Business Clearance Memo. at 69. The VA also used pricing received from a recently cancelled solicitation for this same requirement (RFP No. 36C10G19R0022) to validate the accuracy of the IGCE. COS at 34; AR, Tab 8, Business Clearance Memo. at 69. Moreover, the record shows that the geographic areas for the previous contract and this requirement are nearly identical

and provide an apt comparison for the IGCE. COS at 36. We have no basis to conclude that the IGCE was unreasonable.

Nor do we find that the application of this methodology led to unreasonable results. The RFP required offerors to propose their best price terms. RFP & amends. at 139. For the set-aside CLIN/VISNs, Academy Medical proposed the following prices, ranging from 80 percent to 254 percent higher than the IGCE:<sup>6</sup>

VISN	IGCE	Academy Medical Proposed Price	Percent Higher Than IGCE
1	\$(DELETED)	\$(DELETED)	166%
2	\$(DELETED)	\$(DELETED)	120%
4	\$(DELETED)	\$(DELETED)	147%
5	\$(DELETED)	\$(DELETED)	139%
6	\$(DELETED)	\$(DELETED)	218%
8	\$(DELETED)	\$(DELETED)	254%
10	\$(DELETED)	\$(DELETED)	155%
17	\$(DELETED)	\$(DELETED)	80%

COS at 38; AR, Tab 8, Business Clearance Memo. at 70-76. The protester argues principally that because small businesses typically have higher costs than large businesses and the VA determined small business prices exceeding large business prices by 137 percent to 196 percent were fair and reasonable on prior MSPV contracts, it is not reasonable for the VA to determine its prices are too high when they fall within that range. Protest at 9, 34-37. We are unpersuaded. As we have repeatedly observed, each procurement stands alone, and an action taken under a prior procurement is not necessarily relevant to the reasonableness of the action taken under the present procurement. See *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. The record establishes that contracting officer reasonably determined that Academy Medical's price proposal was not fair and reasonable.

Similarly, we find the agency's exclusion of the protester from the competitive range to be unobjectionable. The determination of whether a proposal is in the competitive range is principally a matter within the judgment of the procuring agency. *Tiger Enters.*,

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<sup>6</sup> This range does not include Academy Medical's bundled price because such pricing was not available unless Academy Medical was awarded three or more VISNs. Using the bundled price, Academy Medical's prices are 62 percent to 187 percent higher than the IGCE. AR, Tab 8, Business Clearance Memo. at 70-76.

*Inc.*, B-403475.2, Feb. 15, 2011, 2011 CPD ¶ 44at 2-3. We will review that judgment--and the evaluation judgments on which it was based--only to ensure that it was reasonable and in accord with the solicitation and applicable statutes and regulations. *Id.*

Here, the agency's determination was reasonable and in accordance with the RFP. The RFP provided that "only the most highly rated proposals deemed to have a reasonable chance for award" would be included in the competitive range. RFP & amends. at 139. The VA excluded Academy Medical from the competitive range because it was not one of the most highly rated proposals and it could not be made awardable through discussions. COS at 37-40. The VA acknowledged that it may have been possible for Academy Medical to resolve the weaknesses assessed under its technical evaluation during discussions. AR, Tab 8, Business Clearance Memo. at 68. The VA also asserted that the moderate risk assigned to Academy Medical's past performance proposal did not make it unawardable. COS at 22. The agency determined, however, that Academy Medical's proposed prices for the set-aside CLIN/VISNs was not fair and reasonable and could not be made fair and reasonable even with extensive discussions. *Id.* at 20, 37 & n.21. Given that the protester's prices for the CLIN/VISNs range from 80 percent to 254 percent higher than the IGCE, we see no basis to question the VA's determination that Academy Medical's prices could not be made fair and reasonable through discussions, or its decision to exclude Academy Medical from the competitive range.

The protest is denied.

Thomas H. Armstrong  
General Counsel