



Decision

Matter of: Virtual Medical Group, LLC

File: B-418386

Date: March 25, 2020

Matthew P. Banks for the protester.
Tyler W. Brown, Esq., Department of Veterans Affairs, for the agency.
Raymond Richards, Esq., and Laura Eyester, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's corrective action is denied where, after an agency-level protest, the record reflects that the agency identified flaws in the evaluation and solicitation that warranted cancelling the solicitation and issuing a revised solicitation.

DECISION

Virtual Medical Group, LLC (Virtual), a service-disabled veteran-owned small business (SDVOSB) of Alexandria, Virginia, protests the cancellation of request for quotations (RFQ) No. 36C24519Q0425, issued by the Department of Veterans Affairs (VA) for medical transcription services for the Beckley VA Medical Center. Virtual contends that the cancellation of the solicitation was unreasonable.

We deny the protest.

The VA issued the RFQ on July 3, 2019, as a set-aside for SDVOSBs, under the simplified acquisition procedures of Federal Acquisition Regulation (FAR) part 13. Agency Report (AR), Tab 1, RFQ, at 1; *id.*, Tab 2, Contracting Officer's Statement (COS) at 2. The agency sought quotations for medical transcription services for digital dictation, traditional medical transcription and correction editing services. RFQ at 4. The RFQ was publicized on the Federal Business Opportunities (FBO) website, which, at the time, was designated as the single, governmentwide point of entry (GPE).¹ COS

¹ At the time of this posting, FBO was designated as the single, governmentwide point of entry. See FAR § 2.101. We note that the single, governmentwide point of entry has since migrated to <https://beta.sam.gov>.

at 1. However, the RFQ also stated that the “terms and conditions of the contractor’s [Federal Supply Schedule (FSS)] contract . . . apply.” RFQ at 24.

The RFQ contemplated the award of a fixed-price contract with a base period of 1 year, and four 1-year options. Id. at 6, 21-23. The agency was to evaluate quotations on a lowest-priced, technically acceptable (LPTA) basis. Id. at 51. Tradeoffs would not be permitted, and quotations would be evaluated for acceptability but not ranked using non-price factors. Id. To be rated acceptable, quotations needed to clearly meet the solicitation’s minimum requirements. Id. at 52. Quotations that did not meet the solicitation’s minimum requirements would be rated unacceptable and excluded from award consideration. Id. at 51-52. Quotations were due by July 17. Id. at 1.

The VA received six quotations in response to the RFQ, including one from Virtual. COS at 1. On July 18, the contract specialist contacted Virtual and requested clarification of its quotation concerning pricing; this was the only quotation on which the VA sought clarification. Id.; see also Protest, Encl. 2, Email from VA to Virtual, Jul. 18, 2019. On August 5, Virtual submitted a revised quotation including an updated price. COS at 1; see also Protest, Encl. 2, Email from Virtual to VA, Aug. 5, 2019. After evaluating quotations, the VA concluded that Alpha4 Solutions LLC (Alpha4) submitted the highest-rated, lowest-priced quotation; Virtual was found technically acceptable and submitted the fourth lowest price. COS at 1; AR, Tab 5, Abstract of Quotations; see also Protest, Encl. 4, Post-Award Notice. On November 3, the VA notified Virtual that award had been made to Alpha4 for a total price of \$166,478. Protest, Encl. 4, Post-Award Notice.

On November 7, Virtual filed an agency-level protest asserting two primary arguments: (1) award to Alpha4 was improper because the agency miscalculated quotations; and (2) the agency provided Virtual with an inadequate debriefing. Protest, Encl. 7, Agency-Level Protest, at 1, 3-6. According to Virtual, the award price of \$166,478 could not have been the awardee’s total price for the base period plus all option periods; Virtual contended that such a price could only cover the base period. Id. at 3. Virtual argued that its quotation was technically acceptable and included a base period price less than \$166,478, and therefore Virtual, not Alpha4, submitted the lowest-priced, technically acceptable quotation. Id.

On December 17, the VA informed Virtual that it was taking corrective action in response to Virtual’s agency-level protest. AR, Tab 4, Agency Decision, at 1. Upon review of the record, the agency discovered “procurement irregularities” and decided that cancelling the RFQ and issuing a revised RFQ was appropriate. Id. Because the agency’s corrective action terminated Alpha4’s award and the RFQ at issue, the VA determined that Virtual’s protest had been rendered academic and dismissed it as such. Id.

On December 30, the agency issued RFQ No. 36C24520Q0133 as a set-aside for SDVOSBs on the General Services Administration’s (GSA) e-Buy website seeking quotations for medical transcription services for digital dictation, traditional medical

transcription and correction editing services. Supp. AR, Tab 6, Revised RFQ, at 2, 6. On December 30, Virtual filed a protest with our Office, challenging the agency's cancellation of the solicitation.

DISCUSSION

Interested Party

As an initial matter, the VA requests dismissal of the protest, asserting that Virtual is not an interested party to challenge the agency's cancellation of the solicitation. Memorandum of Law (MOL) at 1-3. The agency claims that because the underlying procurement was conducted on an LPTA basis and Virtual submitted the fourth lowest-priced quotation, Virtual would not be in line for award if its protest were sustained. Id. at 2-3. For the following reasons, we conclude that Virtual is an interested party to challenge the cancellation of the solicitation.

The jurisdiction of our Office is established by the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. That authority states that only an interested party may protest a federal procurement, including the cancellation of a solicitation. Id. §§ 3551, 3553(a). That is, a protester must be an actual or prospective bidder or vendor whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves the consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2.

Our Office has stated before that a protester is not an interested party to challenge the cancellation of a solicitation where it would not have been an interested party to challenge the award under that solicitation. FitNet Purchasing All., B-310031, Sept. 21, 2007, 2007 CPD ¶ 181 at 3. A protester is an interested party to challenge an agency's evaluation of quotations and award decision where there is a reasonable possibility that the protester would be in line for award if its protest were sustained. NCS Techs., Inc., B-416936, Jan. 11, 2019, 2019 CPD ¶ 56 at 3.

Here, the VA has stated that its "evaluation was flawed." AR, Tab 3, Corrective Action Recommendation, at 1. For example, the VA states: (1) the evaluation was flawed because vendors that submitted non-responsive quotations were not eliminated from award consideration; (2) the technical evaluations were flawed because they were based on numerical ratings to assess relative merit, rather than pass/fail ratings; (3) the RFQ did not clearly state technical acceptability factors; (4) the technical evaluators were improperly advised to use evaluation criteria that were not appropriate for use in an LPTA evaluation; and (5) the record indicates disparate treatment may have occurred because one vendor was advised of issues concerning its quoted price and another vendor was not advised of its pricing issues. Id. Because of these errors, we are unable to say with certainty that Virtual would not be in line for award if its protest

were sustained. Consequently, Virtual is an interested party to challenge the agency's cancellation of the solicitation. 31 U.S.C. § 3551(1); cf. FitNet Purchasing All., supra.

Cancellation of Solicitation

Virtual argues that cancelling the RFQ and issuing a revised RFQ was not rationally related to the procurement defect alleged by the protester in its agency-level protest. Protest at 9-10. Specifically, the protester claims that the agency improperly evaluated price, and contends that Virtual, not Alpha4, submitted the lowest-priced, technically acceptable quotation. Id. at 7. The protester asserts that because the agency miscalculated quotations, the proper corrective action is reevaluation of quotations, not cancellation of the RFQ.² Id. at 7, 9-10; id., Tab 7, Agency-Level Protest, at 1.

The VA argues that cancelling the RFQ and issuing a revised RFQ was within the agency's broad discretion given the flaws identified in the solicitation and evaluation discussed above. Specifically, the agency contends that: (1) the RFQ was improperly issued concurrently on FBO using FAR part 13 procedures and on GSA's e-Buy pursuant to FAR part 8 procedures; (2) the RFQ did not include estimated quantities;³ and (3) the RFQ did not include technical acceptability factors. Supp. MOL at 2; Supp. COS, Feb. 18, 2020, at 1. For the reasons explained below, we find that the agency's cancellation of the solicitation was reasonable.⁴

Contracting officers have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. American Warehouse Sys., LLC, B-412543, Mar. 1, 2016, 2016 CPD ¶ 66 at 3. As a

² Virtual originally argued that once a competitive range of technically acceptable quotations was established, the award had to be made to the low bidder. Protest at 12-13. However, as the agency explains, this acquisition was not conducted using sealed bid procedures and there was no competitive range. See MOL at 4; RFQ at 1. Further, the agency notes that the technical acceptability of quotations has been called into question. AR, Tab 3, Corrective Action Recommendation, at 1.

³ We note that the agency's argument that the RFQ did not include estimated quantities is factually inaccurate. As the protester points out, the VA issued an amendment to the solicitation that included estimated quantities. Supp. Comments, Feb. 24, 2020, at 4; Supp. AR, Tab 8, Questions & Answers, at 1-2.

⁴ Virtual also raised a number of other collateral arguments. Although we do not address every argument, we have reviewed them all and conclude that none provide a basis on which to sustain the protest. For example, Virtual argued that the agency did not provide it with an adequate debriefing. Our Office will not review a protester's contention that a debriefing was inadequate because the adequacy of a debriefing is a procedural matter concerning the agency's actions after award, which are unrelated to the validity of the award itself. Symlicity Corp., B-297060, Nov. 8, 2005, 2005 CPD ¶ 203 at 4 n.4.

general matter, the details of corrective action taken in response to a protest are within the sound discretion and judgement of the contracting agency. Id. We will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. IDEAL Indus., Inc., B-416416, July 26, 2018, 2018 CPD ¶ 253 at 4.

Further, our Office has stated that a contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ.⁵ Medfinity LLC, B-413450, Sept. 9, 2016, 2016 CPD ¶ 255 at 4. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation has been drafted without sufficiently detailed evaluation criteria to permit a fair and equal evaluation of all quotations. Id. If a reasonable basis exists to cancel a solicitation, an agency may cancel the solicitation regardless of when the information first surfaces or should have been known, even if the solicitation is not canceled until after proposals have been submitted and evaluated, or even if discovered during the course of a protest. North Shore Med. Labs, Inc.; Advanced BioMedical Labs., LLC, B-311070, B-311070.2, Apr. 21, 2008, 2008 CPD ¶ 144 at 4.

Here, we find reasonable the agency's decision to cancel the RFQ and resolicit its requirements in response to the agency-level protest. The VA submits sufficient examples of aspects of its original procurement that necessitated this action. For example, the VA explains that the original RFQ stated that award would be made to the vendor submitting the lowest-priced, technically acceptable quotation. Supp. COS, Feb. 18, 2020, at 1; RFQ at 51-52. However, the original RFQ did not explain how the agency would specifically determine technical acceptability. AR, Tab 3, Corrective Action Recommendation, at 1; Supp. COS, Feb. 18, 2020, at 1. Additionally, the agency states that the technical evaluators were improperly advised to choose evaluation criteria that were not appropriate for use in an LPTA evaluation. AR, Tab 3, Corrective Action Recommendation, at 1. The revised RFQ states that award will be made to the responsible vendor on a lowest-priced technically acceptable basis. Supp. AR, Tab 6, Revised RFQ, at 84. The revised RFQ lists five factors the agency will use to evaluate quotations in making an award decision and requires vendors to provide

⁵ To the extent that Virtual has argued the agency's cancellation of the solicitation is a pretext, that is, that the agency's actual motivation is to avoid awarding a contract on a competitive basis or to avoid deciding a protest on the merits, we will closely examine the reasonableness of the agency's actions in canceling the acquisition. VIRE Consulting, Inc., B-408148.2, Nov. 26, 2013, 2013 CPD ¶ 272 at 3. Notwithstanding such scrutiny, however, and even if it can be shown that personal animus or pretext may have supplied at least part of the motivation to cancel the procurement, the reasonableness standard applicable to the cancellation of a solicitation remains unchanged. Lasmer Indus., Inc., B-400866.2 et al., Mar. 30, 2009, 2009 CPD ¶ 77 at 4. We also note that Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference and supposition. Medfinity LLC, supra at 4 n.6.

information on previous experience, compliance with the limitations on subcontracting, past performance, and socio-economic status. Id. at 69, 84-85.

Accordingly, we find no basis to object to the agency's corrective action of cancelling the solicitation in response to the protester's agency-level protest. Here, the agency has demonstrated cancellation of the solicitation was reasonable and appropriate to remedy the concerns that caused the agency to take corrective action.⁶

The protest is denied.

Thomas H. Armstrong
General Counsel

⁶ To the extent that Virtual argues that the revised solicitation is unfair because it is limited to FSS vendors and Virtual does not hold an FSS contract, this is not a valid basis of protest. The procedures established for the FSS program satisfy the requirement for full and open competition. 41 U.S.C. § 152(3); FAR § 6.102(d)(3). Thus, limiting the pool of competition to vendors holding FSS contracts is legally permissible, even if an individual protester may be unable to compete because it does not hold an FSS contract. FitNet Purchasing All., *supra*; see also Information Ventures, Inc., B-299422, B-299422.2, May 1, 2007, 2007 CPD ¶ 88 at 3 (decision to use FSS program was not evidence of bias against a protester that lacked an FSS contract).