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Decision

Matter of: M&C Venture Group, LLC

File: B-419270

Date: January 11, 2021

Justin T. Huffman, Esq., Camardo Law Firm, PC, for the protester.
Deborah K. Morrell, Esq., Department of Veterans Affairs, for the agency.
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DIGEST

Protest that the agency improperly exercised an option under another offeror's existing contract is denied where the agency reasonably determined that exercising the option was the most advantageous means of satisfying the agency's needs.

DECISION

M&C Venture Group, LLC (M&C), a service-disabled veteran-owned small business (SDVOSB) of Bellport, New York, protests the exercise of an option to extend services under contract No. 36C24220D0088 awarded to United Veterans Beacon House (UVBH), of Bay Shore, New York, by the Department of Veterans Affairs (VA), for residential housing services for homeless veterans as part of the healthcare for homeless veterans (HCHV) program. M&C contends that the agency failed to follow applicable regulations in exercising the option.

We deny the protest.

BACKGROUND

On August 5, 2019, the VA issued request for proposals (RFP) No. 36C24219R0109, on an unrestricted basis, pursuant to Federal Acquisition Regulation (FAR) parts 12 and 15. Agency Report (AR), Tab 3, RFP at 1, 5. The solicitation sought residential housing services for homeless veterans on-site at the Northport VA Medical Center in Northport, New York, and required that the contractor provide room and board, food service, laundry service, therapeutic and rehabilitative services, and case management for identified veterans. *Id.* at 10-13. The contract awarded under this RFP will move the homeless housing and case management services from their current location at off-site facilities in Long Island, New York to on-site facilities at the Northport VA Medical

Center. AR, Tab 2, Contracting Officer's Statement (COS) at 1. At the time this solicitation was issued, UVBH was providing residential housing services off-site at its two Long Island, New York locations under a contract with the VA that was set to expire on March 31, 2020. *Id.*

The solicitation anticipated award of a fixed-price, indefinite-delivery, indefinite-quantity contract with a 1-year base period and four 1-year option periods to begin January 1, 2020. RFP at 6-7, 91. The due date for proposals was September 6, 2019. *Id.* at 1.

On September 11, 2019, our Office received a protest from a different unsuccessful offeror challenging the agency's refusal to extend the proposal deadline. We denied that protest on November 21, finding that the agency's refusal was reasonable. *Patriot First Prof'l Servs., Inc.*, B-417965, Nov. 21, 2019, 2019 CPD ¶ 393 at 3. While that protest was pending, the VA stayed its evaluation. COS at 1.

On February 13, 2020, the VA awarded the contract to UVBH, and M&C filed a protest with our Office on February 21. *Id.* M&C argued that the agency failed to evaluate proposals in accordance with the stated evaluation criteria and failed to conduct a proper best-value tradeoff analysis. In response, the VA proposed to take corrective action by terminating the contract award, reevaluating proposals consistent with the solicitation terms, and making a new award decision. On March 10, we dismissed the protest as academic. *M&C Venture Group, LLC*, B-417965.2, Mar. 10, 2020 (unpublished decision).

On March 26, the VA posted on the website beta.SAM.gov, a notice of award and justification and approval (J&A) for other than full and open competition for the award of a short-term, sole-source contract to UVBH for residential housing and case management services as part of the HCHV program on Long Island.¹ COS at 3. The VA determined the interim emergency contract was required to provide the necessary services while the VA completed its corrective action. AR, Tab 4b, J&A at 1. The VA further determined that any gap in the provision of services "would have a detrimental impact on those veterans in this geographical area." AR, Tab 4b, J&A at 2. The expiring contract was the only contract for such services for homeless veterans on Long Island, and therefore the agency found that it was necessary to obtain continuous services from UVBH. *Id.* The J&A states that the justification is authorized under FAR 6.302-2, Unusual and Compelling Urgency. AR, Tab 4a, J&A Notice at 1.

The VA awarded a sole-source contract to UVBH on March 25 with an effective date of April 1 for a base period of 6-months, with two 3-month option periods. AR, Tab 7a,

¹ In the agency report, the VA identified FedBizOpps, FBO.gov, instead of beta.sam.gov as the government-wide point of entry that the VA used to post the notice of award and J&A, however, FBO.gov migrated to beta.sam.gov in November 2019. The distinction between FBO.gov and beta.sam.gov has no bearing on our analysis of the issues presented.

Contract at 5. The option periods were evaluated in awarding the contract.² AR, Tab 4b, J&A at 1.

On May 29, M&C filed an agency-level protest with the VA challenging the award of the contract to UVBH and arguing that the VA violated the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557 (CICA), which sets forth the statutory requirements for full and open competition. M&C argued that the VA's lack of advanced procurement planning created the urgency that required the VA to issue a sole-source award. AR, Tab 9, M&C Agency Protest at 2-4. The VA dismissed this protest as untimely on June 17. AR, Tab 10, VA Dismissal of Protest.

On June 12, while M&C's agency-level protest was pending, M&C filed a pre-award protest with GAO. There, M&C challenged the agency's decision not to issue the solicitation as a service-disabled veteran-owned small business set-aside and the implementation of the agency's corrective action taken in response to M&C's earlier GAO protest. *M&C Venture Group, LLC*, B-417965.3, Sept. 15, 2020, 2020 CPD ¶ 317. Again, the VA halted its evaluation. COS at 3. On September 15, we dismissed the protest as untimely and for failing to state a valid basis for protest. *M&C Venture Group, LLC*, B-417965.3, *supra* at 4-5.

On August 11, the contracting officer issued a determination and findings (D&F) outlining the agency's decision to exercise the first 3-month option period under UVBH's contract. AR, Tab 5, D&F at 1. The D&F states that in accordance with FAR 17.207, Exercise of Options, the agency determined, among other things, that "[t]he [o]ption exercise is the most advantageous method of fulfilling the [g]overnment's need, price and other factors considered." *Id.* The D&F includes a statement that after considering price and other factors, the VA determined that "[t]he time between award of the contract and [o]ption exercise is so short that the [o]ption price is the lowest obtainable or the most advantageous offer, taking into account factors such as market stability and the usual duration of contracts such as this." *Id.* The D&F also indicated that the option was evaluated as part of the initial competition and that the contractor had been performing satisfactorily with the terms and conditions of the contract. *Id.* at 1-2. The VA unilaterally exercised option period one on August 17. AR, Tab 7b, Contract Modification 0002 at 1.

In response to this protest, the agency provided additional details regarding the considerations included in the D&F. Regarding price, the contracting officer explains that for the initial award, UVBH's proposed rate per bed was the average of the two, expiring contract rates that had been previously determined fair and reasonable. COS at 2. The contracting officer also compared UVBH's proposed rate to the rates under two other homeless housing contracts in this geographical area; UVBH's rate was lower than both and the contracting officer determined UVBH's proposed rate was fair and reasonable in comparison. *Id.*

² The award document included FAR clause 52.217-9, Option to Extend the Term of the Contract. AR, Tab 7a, Contract at 46.

Additionally, the contracting officer explains that when the initial sole-source award was contemplated, allowable extensions under the expiring contract had been exhausted due to earlier protests. *Id.* at 1. The contracting officer notes that in March, the New York City area was one of nation's hot spots for the COVID-19 pandemic, which made the need for HCHV services even more crucial because businesses and hotels were shutting down, reducing the options for homeless veterans. *Id.* at 2. According to the contracting officer, "[a]ny break in services would have left veterans back on the streets of Long Island during a national pandemic." *Id.* When determining how to maintain these critical services for homeless veterans in the face of the expiring contract, the contracting officer considered the market research undertaken for the long-term solicitation (No. 36C24219R0109). *Id.* The VA conducted extensive market research and UVBH was the only offeror that responded to the agency's sources sought notice. *Id.*

Although M&C submitted a proposal for the long-term solicitation, the agency was unable to identify any relevant past performance related to homeless residential or case management services for M&C. *Id.* The contracting officer explains that in light of the foregoing considerations and because M&C does not "currently operate a homeless shelter of any kind on Long Island or any type of homeless housing program on behalf of the Government in any part of the country," she did not consider M&C for the off-site interim emergency contract. *Id.* The contracting officer further explains that with only a few weeks to begin performance and the limited staff and beds in the community, it was highly unlikely that any homeless shelter other than the incumbent's would be able to fulfill the emergency need without disrupting patient care. *Id.*

With respect to exercising the option period of the contract, the contracting officer indicates that the VA needed to continue these critical HCHV services while M&C's protest was pending with our Office. *Id.* at 3. The contracting officer states that it would have been impossible to resume evaluations and award a new contract, which included a 30-day startup period, before the base period of contract No. 36C24220D0088 expired on September 30, 2020. *Id.*

On October 6, the protester challenged the agency's determination to exercise the option.

DISCUSSION

The protester argues that the agency's exercise of the option failed to meet the requirements for the unusual and compelling urgency exception to full and open competition under FAR 6.302-2. Protest at 3. In this regard, the protester argues that the agency made no effort to make an award under the long-term solicitation after issuing the interim contract. *Id.* at 3-4. The protester contends that the agency could

have made an award under the long-term solicitation that would have eliminated any need for exercise of an option under the interim contract.³ *Id.*

While our Office views an agency's decision not to exercise an option as a matter of contract administration, we will entertain protests arguing that an agency unreasonably decided to exercise an option in an existing contract, rather than conduct a new procurement. *Antmarin Inc. et al.*, B-296317, July 26, 2005, 2005 CPD ¶ 149 at 2 n.2. Because the exercise of an option permits an agency to satisfy current needs for goods or services without going through formal competitive procedures, the FAR provides that before an option can be exercised, an agency must make a determination that exercise of the option is the most advantageous method of fulfilling its need, price and other factors considered. FAR 17.207(c)(3). As a general rule, option provisions in a contract are exercisable at the discretion of the government. *Nutriom, LLC*, B-402511, May 11, 2010, 2010 CPD ¶ 113 at 3. Our Office will not question an agency's exercise of an option under an existing contract unless the protester shows that the agency failed to follow applicable regulations or that the determination to exercise the option, rather than conduct a new procurement, was unreasonable. *InGenesis, Inc.*, B-412101.2, Mar. 28, 2016, 2016 CPD ¶ 102 at 5; *Sippican, Inc.*, B-257047.2, Nov. 13, 1995, 95-2 CPD ¶ 220 at 2.

We find no basis to question the agency's exercise of the option here. As noted above, the record shows that the contracting officer based her decision to exercise the option on the short timeframe between award and exercise of the option, in accordance with FAR 17.207(d)(3). The contracting officer also considered that UVBH's option rate had been considered in the evaluation of the base contract and that UVBH's performance on the base contract was satisfactory.

The contracting officer determined that exercising the option was the most advantageous method of fulfilling the agency's need to provide these critical services for homeless veterans, taking into account the agency's need for continuity of operations. In this regard, the agency suspended implementation of its corrective action and evaluation of revised proposals for the long-term solicitation while M&C's GAO protest was pending. The contracting officer noted it would have been impossible to resume evaluations, award a new contract, and allow for the 30-day startup period before the emergency contract expired on September 30.

Furthermore, we disagree with M&C that exercising the option for the sole-source contract to UVBH was the result of a lack of advanced procurement planning on the part of the VA. We note that the requirement for advance planning under CICA, 41 U.S.C. § 3304(e)(5)(A)(i), does not mean that such planning must be entirely successful or completely error-free, but, as with all actions taken by an agency, the advance planning must be reasonable. *Camden Shipping Corp.*, B-406171, B-406323, Feb. 27, 2012,

³ The protester raises other collateral arguments that are not discussed in this decision. We have reviewed all of the protester's allegations and conclude that they are without merit.

2012 CPD ¶ 76 at 8. As described above, the record reflects that the VA has consistently tried to use the competitive process to award a long-term contract for the HCHV program at the Northport VA Medical Center. Significantly, this procurement has been subject to several agency-level and GAO protests filed by M&C, which have added to the delay about which M&C complains.

Given that the delays in awarding the long-term contract are due primarily to the agency's reasonable implementation of corrective action, we do not consider the sole-source contract at issue here to be the result of a lack of advanced planning. See *Systems Integration & Mgmt., Inc.*, B-402785.2, Aug. 10, 2010, 2010 CPD ¶ 207 at 3 (denying argument that noncompetitive task order was the result of a lack of advanced planning where the need for the 3-month task order was due to the agency's implementation of corrective action).

In sum, the agency appropriately considered pricing and other information, as permitted by the FAR, and reasonably determined that the exercise of the option under UVBH's sole-source contract was the most advantageous method of fulfilling its needs. FAR 17.207(d)(3) and (e).

The protest is denied.

Thomas H. Armstrong
General Counsel