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Decision

Matter of: Coley & Associates, Inc.

File: B-404034; B-404034.2; B-404034.3

Date: December 7, 2010

Gerard F. Doyle, Esq., and Ron R. Hutchinson, Esq., Doyle & Bachman LLP, for the protester.

David Z. Bodenheimer, Esq., and Jonathan M. Baker, Esq., Crowell & Moring LLP; and Matthew Klein, Esq., Enterprise Services Group of UnitedHealthcare Group, Incorporated, for the intervenor.

Anthony E. Marrone, Esq., and Erin Podolny, Esq., Department of Health and Human Services, for the agency.

Jonathan L. Kang, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's rejection of the protester's quotation as technically unacceptable is denied where the record shows that the agency reasonably assessed numerous deficiencies in the quotation.

DECISION

Coley & Associates, Inc., of San Antonio, Texas, protests the award of a contract to Ingenix Public Sector Solutions, Inc., of Rockville, Maryland, by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), under request for quotations (RFQ) No. RFQ-MPCD-2010-DRCG03, for the development and operation of a multi-payer claims research database. Coley challenges the evaluation of its technical quotation and the evaluation of Ingenix's past performance.

We deny the protest.

BACKGROUND

The solicitation, issued on June 10, 2010, sought quotations to develop and operate a multi-payer claims database, using Medicare, Medicaid, and other public and private claims data. The database will be used to support comparative effectiveness

research (CER), which is defined as a method of “comparing the benefits and harms of different interventions and strategies to prevent, diagnose, treat and monitor health conditions in ‘real world’ settings.” RFQ, encl. 1, Statement of Work (SOW), at 3. The SOW requires the contractor to identify federal and non-federal sources of claims data, enter into agreements to obtain the data, develop the hardware and software tools to provide access to the data, and make the data accessible to researchers. Id. at 4.

The competition was limited to vendors who hold contracts under General Services Administration Federal Supply Schedule No. 70. The RFQ anticipated award of a fixed-price task order with a 3-year period of performance. The RFQ stated that quotations would be evaluated based on price, and the following non-price factors: discussion and understanding of the scope of work (20 points); technical approach (40 points); qualifications of proposed personnel (30 points); management plan (10 points); and past performance (pass/fail). RFQ, encl. 2, Instructions, at 1-5; encl. 3, Evaluation Criteria, at 1-5. The RFQ advised vendors that, for purposes of award, the non-price factors were more important than price.

CMS received quotations from five vendors by the closing date of July 22. The agency evaluated each vendor’s technical quotation and assessed strengths, weaknesses, significant weakness, and deficiencies as follows:

| | Strengths | Weaknesses | Significant Weaknesses | Deficiencies |
|-----------------|------------------|-------------------|-------------------------------|---------------------|
| Ingenix | 10 | 3 | 5 | 1 |
| Vendor 3 | 11 | 5 | 4 | 1 |
| Vendor 4 | 4 | 2 | 7 | 2 |
| Coley | 1 | 5 | 7 | 5 |
| Vendor 5 | 2 | 3 | 5 | 5 |

Agency Report (AR), Tab 25, Initial Technical Evaluation, at 2-16. The agency assigned point scores, evaluated past performance, and assessed the technical acceptability for the quotations as follows:

| | Technically Acceptable | Technical Score | Past Performance | Price |
|-----------------|-------------------------------|------------------------|-------------------------|--------------|
| Ingenix | Yes | 84 | Pass | \$20,259,667 |
| Vendor 3 | Yes | 82 | Pass | \$34,969,639 |
| Vendor 4 | Yes | 64 | Pass | \$18,842,751 |
| Coley | No | 36 | Pass | \$19,481,172 |
| Vendor 5 | No | 16 | Pass | \$29,801,340 |

AR, Tab 39, Negotiation Memorandum, at 7.

As relevant here, CMS concluded that the evaluated deficiencies in Coley's quotation rendered it technically unacceptable. AR, Tab 25, Initial Technical Evaluation, at 13. Based on its evaluation, the agency limited the competitive range to the quotations of Ingenix and Vendor 3. After discussions were conducted, these two vendors submitted revised quotations. The technical score of Ingenix's quotation was increased to 86 points, while Vendor 3's was reduced to 81 points. The agency made award to Ingenix based on its technically superior quotation, as reflected by its higher technical score, and its lower revised price of \$16,436,382. AR, Tab 39, Negotiation Memorandum, at 7. The agency notified Coley of the award on September 14. This protest followed.

DISCUSSION

Coley argues that the agency's evaluation of its technical quotation was flawed. The protester argues that the agency should have identified three additional strengths for its quotation,¹ and challenges the agency's assessment of each of the five weaknesses, seven significant weaknesses, and five deficiencies for its quotation. The protester contends that, but for the agency's improper evaluation, Coley's quotation would have been in the competitive range and eligible for discussions. Although we do not address each of the challenges raised by Coley, we have reviewed all of the protester's arguments and find no basis to conclude that the agency improperly rejected its quotation as technically unacceptable.²

The evaluation of a proposal or quotation is a matter within the agency's discretion. Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 9. In reviewing a protest against an agency's evaluation, our Office will not reevaluate quotations but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and

¹ In its comments on the agency report, which were filed on November 8, 2010, Coley also identified two additional strengths that it contends should have been recognized in its quotation. CMS had previously provided the protester a copy of its technical evaluation on October 10 as part of the agency's dismissal request; this submission identified all of the evaluated strengths and weaknesses in Coley's quotation. Because the arguments regarding the two additional strengths were not raised within 10 days of when Coley knew or should have known of the basis for the arguments, we dismiss them as untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2010).

² Coley also argues that the agency failed to consider its proposed price prior to eliminating it from the competitive range. However, an agency need not consider a vendor's price prior to establishing the competitive range if the quotation is technically unacceptable. See TMC Design Corp., B-296194.3, Aug. 10, 2005, 2005 CPD ¶ 158 at 4.

applicable procurement statutes and regulations. Torres Advanced Enters. Solutions, LLC, B-403036, Aug. 18, 2010, 2010 CPD ¶ 197 at 2. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing quotations does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

Alleged Strengths in Coley's Quotation

Coley contends that it should have received additional strengths under the technical evaluation. For example, the protester contends that its quotation should have received a strength because one of its proposed subcontractors, HealthTrio LLC, has extensive experience with handling and integrating claims and clinical data over the past 10 years. The agency explains that it did not assign a strength in this area because it viewed the protester's quotation as meeting, but not exceeding, the solicitation requirements. TEP Evaluator Decl. at 8. CMS found that although Coley's quotation reflected experience with managing data from various sources, the experience was based primarily on clinical data, rather than claims data, the latter of which is the focus of the contract requirements. AR, Tab 25, Initial Technical Evaluation, at 13. In this regard, the agency states that the protester's quotation did not provide details concerning its approach to integration and management of data in a way that demonstrated that Coley's quotation exceeded the solicitation requirements for developing a claims-based database. TEP Evaluator Decl. at 8. We think that Coley's arguments here set forth no more than a disagreement with agency, and therefore provide no basis to sustain the protest.

Coley also contends that it should have received a strength for its approach to privacy and security because HealthTrio has passed the security requirements for the Department of Defense Information Assurance Certification and Accreditation Process (DIACAP), which is a data security standard for Department of Defense contractors. The protester further notes that its quotation stated that HealthTrio had developed processes to "permit[] data owners to permit or deny access to their health information." AR, Tab 50, Coley Quotation, Technical vol., at 9. CMS argues that neither DIACAP compliance nor the quotation's limited description of HealthTrio's data control processes demonstrates that the protester exceeds the solicitation requirements for information security. In this regard, the technical approach factor stated that the agency would evaluate vendors' "proposed provision of a secured, password protected environment and [whether they vendor] at all times proposes upholding the privacy security standards established by Federal law and relevant data agreements." RFQ, encl. 3, Evaluation Criteria, at 2. On this record, we think that the protester's disagreement as to whether its quotation exceeded the requirements of the solicitation does not provide a basis to sustain the protest.

Deficiencies in Coley's Quotation

Coley challenges CMS's assessment of five deficiencies in its quotation. For example, Coley challenges the agency's assessment of the following deficiency:

Many key roles seem not to have specifically identified staff, including CER researches, system administrator, data support center manager, [which] are critical to the success of the project.

AR, Tab 25, Initial Technical Evaluation, at 13. In its quotation, Coley provided a chart indicating positions to be filled on one axis, and a series of qualifications on the other axis; for each position, the chart indicated by a series of check marks whether the individual proposed for that position possessed a particular qualification. AR, Tab 50, Coley Quotation, Technical vol., at 30-31. Coley concedes that although it identified specific individuals for most of the positions, it did not do so for every position. Protester's Comments at 46. Instead, for certain positions, including those noted in the agency's evaluation, Coley identified the name of the position and indicated that the position was a "New Hire" or listed the name of one of Coley's proposed subcontractors. AR, Tab 50, Coley Quotation, Technical vol., at 30-31. Coley contends that, regardless of what was stated in its quotation, the company would have had staff available for assignment following contract award. Protester's Comments at 46. Based on our review, we think that the agency reasonably assessed a deficiency here because Coley's quotation did not indicate whether the protester was proposing specific—but unnamed—individuals to fill the positions, or whether the protester intended to identify and hire individuals at a later date.

Coley also challenges CMS's assessment of a deficiency based on the protester's "[u]nder emphasis on CER expertise" and lack of "any committed CER expertise." AR, Tab 25, Initial Technical Evaluation, at 13. The protester argues that the evaluation criteria did not specifically require vendors to demonstrate their expertise with CER.

Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor that might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated factors. Digital Solutions Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 10.

Here, CMS contends that CER expertise is clearly related to the requirements of the solicitation, namely the development and maintenance of a database to enable CER research. The agency notes the "understanding of the scope of work" evaluation factor stated that the agency would evaluate a vendor's understanding of "the goal of the multi-payer, multi-claims database, requirements (data and otherwise) for analysis of complex health care problems such as comparative effectiveness." RFQ, encl. 3, Evaluation Criteria, at 1. The "technical approach" evaluation factor stated that the agency would evaluate a vendor's "resource and how it will fit in the overall

CER data infrastructure.” Id. at 2. Additionally, the RFQ SOW requires the contractor to “demonstrate the power and usability of the database by performing three CER analyses with the intent of producing an analysis and paper of peer-review quality.” RFQ, encl. 1, SOW Task 13.1. On this record, we think that the agency reasonably considered whether the protester’s quotation demonstrated expertise with CER.

The protester also argues that its quotation in fact addressed CER expertise in the context of the company’s experience with encoding data using the Systematized Nomenclature of Medicine – Clinical Terms (SNOMED CT) format, which is used to standardize medical records. However, neither Coley’s quotation nor its protest clearly explains how its experience with encoding of data in the SNOMED CT format demonstrates experience or expertise with the research methodologies required for CER.

Coley further contends that it would rely on its governance board³ and the “personal relationships” of HealthTrio’s chief executive officer to “identify key researchers to fulfill the CER requirements.” Protester’s Comments at 45. The protester’s quotation and protest arguments, however, indicate that that it would, at most, make efforts during contract performance to identify the required personnel. For example, while the protester contends that its commitment to hiring a “multi payor researcher” demonstrates its commitment to support CER requirements, id., this position was one of the “new hires” cited in Coley’s quotation, which, as discussed above, was viewed by the agency as a concern because Coley did not indicate whether the position would be filled with a specific individual or a person to be identified at a later date. AR, Tab 25, Initial Technical Evaluation, at 13; Tab 50, Coley Quotation, Technical vol., at 30-31. On this record, we think that the agency reasonably concluded that the protester’s quotation did not reflect adequate CER expertise. Another deficiency challenged by Coley addressed CMS’s concern that the quotation did not reflect an adequate understanding of CMS data. The agency found that the protester “failed to properly identify that Medicaid data is available through [data use agreements] through CMS” and instead stated that it would obtain Medicaid data through the states. AR, Tab 25, Initial Technical Evaluation, at 13. The agency criticized this approach as “highly inefficient since these data are collected and adjudicated at the national level by CMS to support CER research,” and could result in duplication of information in the database. Id.

The protester argues that the solicitation did not state how Medicaid data was collected and stored, and that the agency therefore applied an unstated evaluation

³ The SOW requires the establishment of a governance board, comprised of representatives from the contractor, data contributors, CMS, and the research community, to provide the contractor with guidance in the development of the database. RFQ, encl. 1, SOW, at 7.

criterion. However, noted by CMS, the solicitation required vendors to demonstrate their understanding of the SOW, including knowledge of the data to be obtained for the database. In this regard, the SOW stated that the contractor would be responsible for obtaining all of the required data to be incorporated into the database, including “Medicare and Medicaid data to be made available by CMS.” RFQ, encl. 1, SOW, at 4. Also, as stated above, the evaluation criteria stated that the agency would evaluate a vendor’s understanding of “the goal of the multi-payer, multi-claims database requirements (data and otherwise) for analysis of complex health care problems such as comparative effectiveness.” RFQ, encl. 3, Evaluation Criteria, at 1. The RFQ further stated that vendor’s quotations “should provide sufficient detail in the [quotation] to indicate a technical understanding of, and capability for, performing all aspects of the SOW.” RFQ, encl. 2, Instructions, at 2. On this record, we think that CMS’s concern that Coley’s quotation did not reflect an understanding of the sources of relevant data for the contract requirements was reasonably based and consistent with the SOW and evaluation criteria.

In sum, we have reviewed each of Coley’s challenges to the five deficiencies found in its quotation, and found the agency’s assessment of these deficiencies was reasonable and consistent with evaluation criteria. Based on these deficiencies, the agency reasonably found Coley’s quotation technically unacceptable, and properly excluded it from the competitive range and from further award consideration.⁴

Ingenix’s Past Performance

The protester also argues that the agency unreasonably concluded that Ingenix’s past performance merited a “pass” rating. Because we find that the agency reasonably found Coley’s quotation unacceptable, Coley is not an interested party to challenge the evaluation of Ingenix’s past performance. In this regard, even if we were to conclude that the agency had improperly evaluated Ingenix’s past performance, Coley would not be in line for award because Vendor 3’s quotation was rated technically acceptable and Vendor 3 proposed a lower price than Coley. See DynCorp Int’l LLC, B-294232, B-294232.2, Sept. 13, 2004, 2004 CPD ¶ 187 at 9-10.

Lynn H. Gibson
Acting General Counsel

⁴ Because CMS reasonably determined that Coley’s quotation was technically unacceptable based on the deficiencies in its quotation, we need not address the protester’s challenges to the weaknesses and significant weaknesses found in its quotation. In any event, we have reviewed all of the protester’s arguments and find no basis to sustain the protest.