



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: East Slope Conservation Services

File: B-282661.2

Date: July 9, 1999

Chris Hindoien for the protester.

Triscilla P. Taylor, Esq., and Justin P. Patterson, Esq., Department of the Interior, for the agency.

Robert C. Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation language misled protester to price its offer on the basis that the agency required acceptance of credit card payment, and that the solicitation called for experience under agency contracts to be more highly rated than experience obtained outside the agency is denied where each allegation is based on protester's misreading of the solicitation.

DECISION

East Slope Conservation Services protests the award of a contract to Helena Weed Control under a commercial item solicitation, No. C50-99-2975, issued as a total small business set-aside by the Bureau of Indian Affairs (BIA), Department of the Interior, for noxious weed control services on the Blackfeet Indian Reservation in Montana. East Slope alleges that, had the solicitation not required offerors to accept payment by Master Card, East Slope would have submitted the lowest offer. East Slope also alleges that its successful past performance with BIA should have been evaluated as superior to the awardee's past performance with another agency.

We deny the protest.

The solicitation was issued on April 14, 1999 with an April 30 closing date. Section E.3, entitled "EVALUATION—COMMERCIAL ITEMS," provided that an award would be made to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the government, price and other factors considered. That section further set forth the evaluation factors, stating that: "[t]echnical and past performance, when combined, are significantly less important than cost or price."

The solicitation incorporated by reference the clause set forth at Federal Acquisition Regulation (FAR) § 52.212-1, which provides in part that offers must show past performance information including “recent and relevant contracts for the same or similar items” and “references (including contract numbers, points of contact with telephone numbers and other relevant information).” The cover page of the solicitation contained the following statement: “Indicate on bid if you accept Master Card.” Solicitation at A-1.

Seven offers were received. The two lowest offers were submitted by Helena Weed Control (\$36,037.50) and the protester (\$38,362.50). On May 3, the agency contacted the Bureau of Land Management (BLM) for a recommendation concerning Helena Weed Control’s past performance. BLM gave the firm positive recommendations with respect to its past performance and technical capabilities under a contract with that agency.

BIA awarded the contract to Helena Weed Control on May 4 based on its low price and favorable technical and past performance references. East Slope filed an agency-level protest on May 5, which was denied on May 10, then filed this protest with our Office on May 12.

East Slope first alleges that the solicitation language on the cover page of the solicitation, quoted above, required bidders to accept payment by Master Card and argues that, if the solicitation had permitted otherwise, East Slope would have reduced its price by its bank fees of 7 percent, and its bid would then have been the lowest submitted. This position is based on a reading of the IFB which is clearly unreasonable. The plain words, “Indicate on bid if you accept Master Card,” constitute a request for information. In this respect, nothing in the solicitation requires an offeror to accept payment by Master Card, expresses a preference for payment by that means or indicates that prices will be differentially evaluated depending upon what form of payment a bidder will accept. To the extent that East Slope is alleging that the language should have been clearer, the allegation is untimely under our Bid Protest Regulations since protests based on alleged defects which are apparent on the face of a solicitation must be filed prior to the closing date. 4 C.F.R. § 21.2(a)(1) (1999). In any event, in order for an ambiguity--patent or latent-- to exist, the language leading to the alleged ambiguity must be shown to have two or more reasonable meanings. DeLancey Printing, B-277698, Nov. 12, 1997, 97-2 CPD ¶ 139 at 3. Here, the language is reasonably susceptible only to the meaning that it is a request for information, not that it is a requirement.

Next, East Slope alleges that its past performance should have been treated as superior to the awardee’s because it has successfully performed the precise type of BIA contract while Helena Weed Control merely has experience with contracts in a different Department of the Interior bureau. Again, the protester has misread the solicitation. The language of the incorporated FAR clause, quoted above, does not limit the past performance information to be considered to experience with BIA and nothing else in the solicitation required offerors to have experience with the

contracting agency or otherwise specified that such experience would entitle an offeror to a superior rating. If East Slope believes that the solicitation should have required or given preference to specific experience with BIA, as explained above this also constitutes an untimely protest of an alleged apparent solicitation defect.

The protest is denied.

Comptroller General
of the United States