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Decision

Matter of: Land Shark Shredding, LLC

File: B-415908

Date: March 29, 2018

Timothy J. Turner, Esq., Whitcomb, Selinsky, McAuliffe, PC, for the protester. Natica C. Neely, Esq., and Donald C. Mobly, Esq., Department of Veterans Affairs, for the agency. Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency finding that protester's quotation was nonresponsive is denied where the record indicates that the protester failed to submit a fully responsive quotation.

DECISION

Land Shark Shredding, LLC, a service-disabled veteran-owned small business (SDVOSB) of Bowling Green, Kentucky, challenges the decision not to issue it a task order under request for quotations (RFQ) No. 36C24218Q0018, issued by the Department of Veterans Affairs (VA) for document shredding services for the New Jersey VA Health Care System. The protester contends that the agency unreasonably found its quotation nonresponsive and that it should have been issued the task order.

We deny the protest.

BACKGROUND

The RFQ, posted on the General Services Administration's (GSA) e-Buy¹ system on November 30, 2017, was set aside for veteran-owned small businesses (VOSB) and requested quotations from vendors holding a GSA Federal Supply Schedule (FSS) 36

¹ The e-Buy portal is designated in Federal Acquisition Regulation (FAR) subpart 8.4 as GSA's electronic RFQ system where ordering activities post requirements. FAR § 8.402(d).

contract. Agency Report (AR), Exh. 1, RFQ, at 1, 23-24; Contracting Officer's Statement (COS) at 1. The RFQ contemplated issuance of a fixed-price task order with a period of performance for one base year and four 12-month option years. RFQ at 5-6. Award was to be made to the lowest-priced, technically-acceptable quotation. Id. at 34.

The RFQ included three evaluation factors: technical; price; and past performance. RFQ at 34-35. For the technical factor, vendors were required to submit a capability statement, not to exceed 10 pages, in which vendors were to address the following three subfactors: performance capability and schedule; management, training, and certification; and subcontracting plan. Id. at 34. For the performance capability and schedule subfactor, the RFQ instructed vendors to provide a "detailed statement of contractor's capability in reference to this requirement," and a "[p]roposed schedule for service to all facilities." Id. For the subcontracting plan subfactor, the RFQ stated:

Provide proposed team, including all subcontractors and the duties which will be performed by the pertinent individuals. This information will enable the [contracting officer] to assess the contractor's compliance with the limitations on subcontracting or percentage of work performance requirement.

Id. The RFQ advised vendors that "[f]ailure to provide the information requested in the evaluation criteria may result in being found non-responsive." Id. at 35.

On December 22, the contracting officer posted an e-Buy notification that no award under the RFQ would be made, and emailed notices to the three vendors that had submitted quotations. COS at 2. On December 30, the protester inquired why no award would be made, and the contracting officer responded on December 31, advising the protester that all of the quotations received were determined to be nonresponsive. AR, Exh. 6, Email Correspondence between Land Shark and Contracting Officer, at 3-4. The contracting officer further advised Land Shark that its quotation was found to be nonresponsive because it had failed to provide a schedule for service to all facilities, as required under the performance capability and schedule subfactor, and had also failed to provide a subcontracting plan. Id. at 4. This protest followed.

DISCUSSION

Land Shark challenges the agency's evaluation of its quotation as nonresponsive and its decision to not issue a task order for the RFQ requirements. Protest at 2. Although our decision does not specifically discuss all of Land Shark's arguments, we have reviewed all of them and find no basis to sustain the protest.²

² Land Shark raises arguments that are in addition to, or variations of, those discussed in this decision, the gravamen of which suggests that the information the agency expected to be submitted in response to the RFQ "is merely an unreasonable demand outside of the necessary scope to grant the contract." Protest at 3; see also Comments (continued...)

Where, as here, an agency issues an RFQ to FSS vendors under the provisions of FAR subpart 8.4 and conducts a competition for the issuance of an order or establishment of a blanket purchase agreement, our Office will not reevaluate the quotations. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶¶26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. Rather, we review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Id. In a competitive FSS procurement, it is the vendor's burden to submit a quotation that is adequately written and establishes the merits of the quotation. DEI Consulting, supra.

Performance Capability and Schedule

The protester argues that the VA erroneously concluded that it had not provided a schedule for service to all facilities. Protest at 3. Land Shark states that within its quotation it “essentially agreed to the frequency needs of the various VA Medical Centers” and “committed in its subject offer to meet the terms of the solicitation for each VA Medical Center at the frequency and quantity requested.” Id. Land Shark argues that it rationally interpreted the RFQ requirement for a schedule to require only that it develop its pricing scheme based on a weekly, bi-weekly, or monthly schedule of service based upon the delivery schedule provided in the RFQ. Id. Land Shark asserts that it has successfully prepared comparable proposals for similar requirements, and the VA did not require any additional information to evaluate its quotation. Id. at 3-4.

The VA argues that the RFQ specifically instructed vendors to provide a schedule with “suggested days of the week, task, and frequency of services to be performed,” and that Land Shark's capability statement failed to include a schedule for services to all facilities. Memorandum of Law (MOL) at 7 (quoting RFQ at 5). The agency further contends that there is no ambiguity in the RFQ, Land Shark's interpretation that its pricing information would provide the required schedule is unreasonable, and that the agency was not required to use information submitted in response to the price factor to determine whether Land Shark's quotation was acceptable under the technical factor. Id. at 8-9.

Where a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of the solicitation. Knight Sky, LLC, B-414371, B-414371.2, May 25, 2017, 2017 CPD ¶ 156 at 4. If the solicitation language is unambiguous, our inquiry ceases. Desbuild Inc., B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a

(...continued)

at 3 (“Land Shark asks the GAO to find as unreasonable the [contracting officer's] requirement to provide suggested days of the week in response to the RFQ.”). These arguments constitute untimely challenges to the terms of the solicitation, and were not considered. See Bid Protest Regulations, 4 C.F.R. § 21.5(e).

manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. Id.

In our view, the solicitation language, when read as a whole, does not support Land Shark's contention that it did not need to include a specific schedule that suggested days of the week, task, and frequency of services to be provided to all facilities in response to the RFQ. The RFQ statement of work stated:

Service schedule: the contractor shall develop and maintain a routine service schedule. The proposed service schedule should provide the suggested days of the week, task, and frequency of service to be performed.

RFQ at 5. The RFQ also provided a table that provided the frequency (bi-weekly, weekly, monthly) and quantity of bins to be serviced for each of the 12 locations. Id. at 5-6. The RFQ also notified vendors that the agency would evaluate their "performance capability document [which] shall include the following: ... [p]roposed schedule for service to all facilities." Id. at 34.

We think it is clear that the RFQ required vendors to propose a schedule that suggested days of the week, task, and frequency of service to be provided to all facilities, and find no ambiguity with respect to this requirement. The protester does not argue that its quotation otherwise included the required schedule, and our review of Land Shark's quotation confirms that it did not include a proposed schedule for providing services to all facilities.³ Accordingly, we find reasonable the agency's determination that Land Shark's proposal was nonresponsive because it failed to provide a proposed schedule.

Subcontracting Plan

The protester also argues that it was not required to submit a subcontracting plan because it is an SDVOSB and the FAR does not require small businesses to submit small business subcontracting plans. Protest at 4. Land Shark states that its quotation informed the agency that the "use of subcontractors on the contract remained undecided, which served as its subcontracting plan," and provided sample agreements that would be used if Land Shark employed subcontractors in the future. Id.; see also id. ("Land Shark met the requirement of [the subcontracting plan subfactor] and submitted a subcontracting plan by informing the VA that it would likely perform the work sans subcontractors."). The agency responds that the language in the RFQ clearly stated that vendors were required to submit a subcontracting plan to provide its proposed team, and that Land Shark's statement that it had not decided whether it

³ As the agency also notes, Land Shark's capability statement exceeded the 10-page limitation stated in the RFQ. MOL at 6 n.3; see AR, Exh. 2, Land Shark Quotation, at 3-51, 58.

would subcontract during performance failed to satisfy the RFQ requirements. MOL at 9-10.

The RFQ stated that the solicitation included FAR clause 52.219-9, Small Business Subcontracting Plan, and VA Acquisition Regulation (VAAR) clause 852.219-9, VA Small Business Subcontracting Plan Minimum Requirement. RFQ at 3. We agree with the protester that these clauses do not apply to small businesses.⁴ See FAR clause 52.219-9(a) (“This clause does not apply to small business concerns.”); VAAR clause 852.219-9(a) (“This clause does not apply to small business concerns.”). However, the RFQ separately provided the technical factors for evaluation, which included a subcontracting plan subfactor. RFQ at 34. This subfactor instructed vendors to provide a proposed team, “including all subcontractors and the duties which will be performed by the pertinent individuals. This information will enable the [contracting officer] to assess the contractor’s compliance with the limitations on subcontracting or percentage of work performance requirement.” Id. In addition, the RFQ stated:

The Government shall not exercise any supervision or control over the contract service as provided in statements of performance. Sub-contract service providers shall be accountable solely to the Contractor who in turn is responsible to the Government.

Id. at 4. Thus, it is clear that the RFQ required vendors to submit a subcontracting plan, not a small business subcontracting plan pursuant to the inapplicable FAR and VAAR clauses.

In its quotation, Land Shark stated the following:

If Land Shark Shredding is selected as the winning contractor, it is currently unknown if we utilize the services of a subcontractor. However, if we do, we have included examples of our Teaming Agreements. Any work we subcontract will be fully compliant with 13 CFR 125.6, which states that no more than 50% of the contract value can be paid to a non-similarly situated subcontractor (attached).

AR, Exh. 2, Land Shark Quotation, at 1. The quotation included a copy of the referenced teaming agreements, as well as a copy of 13 C.F.R. § 125.6. Id. at 33-49.

Here, we find that Land Shark’s quotation failed to provide a subcontracting plan as required by the RFQ. Contrary to the protester’s assertion, Land Shark’s indecision about whether it will perform the work itself or employ a subcontractor to fulfill the

⁴ The VA states: “The RFQ did not include FAR clause 52.219-9 as it is inapplicable to this requirement set-aside for VOSB concerns.” MOL at 10 n. 5. As noted, we agree that FAR clause 52.219-9 is inapplicable in a procurement that is set aside for VOSBs. FAR clause 52.219-9(a).

requirements does not provide the information requested by the RFQ, and did not provide sufficient information to allow the VA to assess compliance with the limitations on subcontracting requirement.

Thus, we find reasonable the agency's determination that Land Shark's quotation was nonresponsive because it failed to provide information concerning a subcontracting plan as required by the solicitation. Since we find reasonable the evaluation of Land Shark's quotation as nonresponsive, we have no basis to question the VA's decision not to issue Land Shark a task order.

The protest is denied.

Thomas H. Armstrong
General Counsel