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Decision

Matter of: United Valve Company

File: B-416277; B-416277.2

Date: July 27, 2018

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DIGEST

Protest that agency failed to determine the identity of the entity selected for award is sustained where the solicitation required that award of a source-control item contract be made to an approved source identified in the solicitation by a specific commercial and government entity (CAGE) code, and the agency made award to an entity that identified itself by a different CAGE code.

DECISION

United Valve Company (United) of El Segundo, California, protests the award of a contract to Logistical Support, LLC (LSL), of Chatsworth, California, under request for proposals (RFP) No. SPE4A7-17-R-1321, issued by the Defense Logistics Agency (DLA), for stability damper assemblies (damper assemblies) for use on the UH-1 helicopter. United contends that the award was improper because the entity receiving award does not appear to be an approved source as required by the solicitation.

We sustain the protest.

BACKGROUND

Issued on September 18, 2017, the RFP sought offers to deliver indefinite quantities of damper assemblies, identified by National Stock Number (NSN) 1615-00-463-7088, within 330 days of the receipt of offer. Agency Report, (AR), Tab 1, RFP at 1-2. The

damper assemblies were identified as a source control item¹ and a critical application item.² Id. at 2, 9. The RFP identified four approved sources, including, as relevant here, United and LSL (hereinafter the approved source). Id. at 9. For each firm listed as an approved source, the solicitation identified the commercial and government entity (CAGE) code associated with that firm, as well as that firm's part number. Id. As relevant here, the RFP identified the approved source's CAGE code as 55064 and its part number as P/N 2020H-9.³ Id.

The RFP also incorporated the standard qualification requirements clause, Federal Acquisition Regulation (FAR) clause 52.209-1 (Qualification Clause). Id. at 19. That clause requires an offeror to have demonstrated that it or its product meets the standards prescribed for qualification prior to award of the contract and provides a space for the offeror to indicate whether it or its product has already met the qualification standards specified. Id. In our June 27, 2018 inquiry to DLA, we asked the agency to explain the qualification requirements for this contract. GAO Questions to DLA at 1. In response, the agency stated that the needed item must be procured in accordance with the approved source(s), the respective CAGE code, and the part numbers identified in the solicitation. DLA Response to GAO Questions at 1.

The RFP contemplated the award of a fixed-price contract for a base year and four 1-year option periods. Id. at 2, 5. Award would be made on a best-value tradeoff basis, considering price, past performance, and other identified evaluation factors, to the offeror whose proposal conformed to the terms and conditions of the RFP. Id. at 5. All evaluation factors, when combined, would be approximately equal to cost or price. Id. at 5.

¹ A source control item is an item manufactured in accordance with the requirements of a source control drawing, which, among other things, provides an engineering description and the acceptance criteria for purchased items, and includes a list of approved manufacturers. Joint Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1 n.1. The agency represents that the items and sources approved on a source control drawing are the only items acceptable for procurement. Id.

² The agency represents that a critical application item is an item that is essential to weapon system performance or operation, or the preservation of life or safety of operating personnel, as determined by the military services. COS/MOL at 2 n.2. (citing Critical Process Filtration, Inc., B-400476 et al., Jan. 22, 2009, 2009 CPD ¶ 25 at 3 n.7; DLA Instruction 3200.4).

³ On June 27, 2018, after the development of the record, our Office sent questions to the agency related to various topics. References to our questions and the agency's responses thereto are interspersed throughout the decision. Here, we asked the agency to clarify the significance of the approved source and critical application item headings. GAO Questions to DLA at 1. The agency stated that the information under the critical application item heading was the most accurate representation of approved sources of supply. DLA Response to GAO Questions at 2.

By the closing date, the agency received proposals from five offerors, including United and an entity identifying itself as Logistical Support, LLC (LSL).⁴ COS/MOL at 3.

As relevant here, the first page of LSL's proposal is a printout from the System for Award Management (SAM) that identifies LSL's CAGE code as 1HFE7 and listed its address as being on Prairie Street in Chatsworth, California.⁵ AR, Tab 7, LSL Proposal, at 1.⁶ Additionally, the SAM printout identified LSL's doing business as (DBA) name as "Cliffdale MFG" and its data universal numbering system (DUNS) number as 032755097. Id. On the Standard Form (SF) 33, LSL listed a CAGE code of 1HFE7 in the cage and facility boxes; and identified its address as Prairie Street in Chatsworth, California. Id. at 3. LSL also identified itself as a manufacturer of the part number referenced in the solicitation. Id. at 52. LSL's proposal does not include a reference to CAGE code 55064, i.e., the CAGE code listed in the RFP as belonging to the approved source.⁷

On February 28, the agency contacted LSL to request clarification regarding its CAGE code because the "CAGE code [it quoted] is not the CAGE . . . listed in the [solicitation]." AR, Tab 4, Record of Significant Events, at 1.⁸ The agency asked, "You are quoting under CAGE Code 1HFE7; however you are listed as an approved source under CAGE Code 55064. They both appear to be associated with the same location.

⁴ The other offerors were removed from consideration because the agency either declined to accept an alternate offer for a source control item or because the proposal did not offer approved parts. Supp. AR, Tab 7, Price Negotiation Memo (PNM), at 2-3.

⁵ When the representative for LSL emailed its proposal, the signature line included the logos for two companies: Cliffdale and RTC AeroSpace, Chatsworth Division (RTC). AR, Tab 8, Email from LSL to DLA, Oct. 17, 2017 (7:08 p.m.).

⁶ Our Office added consecutive numbers to the unnumbered pages of this document.

⁷ Additionally, on November 7, 2017, in response to the agency's inquiry regarding information missing from the proposal, LSL listed CAGE code 34705 in its proposal to identify the CAGE code associated with the location where supplies would be inspected. AR, Tab 7, LSL Proposal, at 48. The SAM database shows that CAGE Code 34705 is associated with an entity named Cliffdale Manufacturing LLC, DUNS number 008506040, DBA RTC Aerospace, and located at the Prairie Street address in Chatsworth, California.

⁸ This document is a chart listing the date and a description of significant events and actions occurring during the procurement with the acquisition specialist's initials next to each significant event. The agency explains that the acquisition specialist conducted all evaluations and reviews leading up to award and is required to procure the needed item in accordance with the approved source(s), the respective CAGE Code, and the part number cited in the solicitation. DLA Response to GAO Questions at 1.

Is one of the CAGEs for administration purposes? Please advise.” AR, Tab 8, Email from DLA to LSL, Feb. 28, 2018 (12:45 p.m.). On March 1, a representative for LSL responded as follows: “[b]oth Cage codes belong to the same facility as stated in the SAM registration. If needed, the quote can be changed to the 55064 cage code.”⁹ Tab 8, Email from LSL to DLA, Mar. 1, 2018 (4:17 p.m.)

After receiving the response, the agency considered whether it could proceed using CAGE code 55064. AR, Tab 4, Record of Significant Events, at 2. On March 5, the agency discussed “using CAGE Code 1HFE7 as the administrative CAGE Code and CAGE Code 55064 for the facility code.”¹⁰ Id.

In the PNM, the agency stated that “LSL is quoting under their administrative CAGE Code 1HFE7 and their facility CAGE Code is 55064. As stated in their SAM’s registration, both CAGE codes belong to the same facility.” Supp. AR, Tab 7, PNM, at 1.

The agency concluded that both LSL’s and United’s proposals were technically acceptable. Id. at 6. Additionally, the agency states that it reviewed the offerors’ recent and relevant past performance ratings in the Past Performance Assessment Reporting System (PPIRS).¹¹ Supp. AR, Tab 7, PNM, at 6. As relevant here, the PPIRS report was pulled using CAGE code 1HFE7. Id. The agency concluded that despite LSL’s lower PPIRS delivery score, the “substantial price increase of [United’s] higher delivery score [could not] be justified.” Id. Based on considering price and past performance equally, the agency selected LSL’s proposal as the best value. Id.

On March 13, United was notified of the award. The next day United filed an agency-level protest asserting that LSL failed to comply with the solicitation’s Qualification Clause, FAR clause 52.209-1, and, therefore, was not an approved source at the time

⁹ The signature line of the email identified the representative’s title as the Government Contracts and Assembly Manager for RTC. AR, Tab 8, Email from LSL to DLA, Mar. 1, 2018 (4:17 p.m.).

¹⁰ Our Office requested further information and any supporting documentation regarding the agency’s determination that LSL could rely on the CAGE code of the approved source, and the definition of an administrative and facility CAGE code. GAO Questions to DLA at 2. The agency’s response explained that an administrative CAGE code is used by a contractor to handle administrative matters, while a facility CAGE is used to identify the location for item manufacturing. DLA Response to GAO Questions, at 2. The agency also stated, without further elaboration, “[w]e determined that CAGE 1HFE7 was the administrative CAGE and 55064 was the facility CAGE.” Id.

¹¹ We note that PPIRS is the Past Performance Information Retrieval System. Neither party raised the discrepancy regarding the name of the performance system and we do not address it further here.

of award. On April 19, prior to receiving a written response to the agency-level protest, United protested to our Office.¹²

DISCUSSION

The gravamen of United's protest is that the entity that submitted the proposal upon which the agency based its award is not the same entity as the approved source listed in the solicitation, and therefore is not qualified for award.¹³ Specifically, United asserts that even though the approved source and LSL were located at the same address, it was unreasonable for the agency to conclude that they were the same legal entity because each entity was identified by a different CAGE code and DUNS number. We have considered the protester's arguments and, for the reasons below, we sustain the protest.

Timeliness

As a threshold matter, we address the timeliness of the protester's argument. The agency contends that United's protest is an untimely challenge to the terms of the solicitation under section 21.2(a)(1) of our Bid Protest Regulations. In this regard, the agency asserts United should have challenged LSL's inclusion as an approved source, which was apparent from the face of the solicitation, prior to the closing date, rather than after award. COS/MOL at 4. In response, United contends that the agency's argument mischaracterizes its protest as a challenge to the identification of LSL as an approved source. The protester asserts that LSL is not the approved source, and LSL failed to comply with the Qualification Clause at the time of award, as required by the solicitation and the FAR. United contends that its protest was appropriately brought within 10 days of notice of award under section 21.2(a)(2).

Our Bid Protest Regulations contain strict rules for the timely submission of protests. They specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1). A protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or

¹² United represents that during an April 9 telephone call with DLA, the agency indicated that United's agency-level protest may be untimely. Protest at 3. Based on what United perceived to be adverse agency action, it filed its protest at our Office. Id.

¹³ The protester also challenged the agency's past performance evaluation, best-value tradeoff, and conduct of discussions. Based on the PNM, which stated that United's proposal was technically acceptable, the protester withdrew the challenge to the agency's conduct of discussions. Supp. Comments at 3 n.1.

delaying the procurement process. Verizon Wireless, B 406854, B 406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4.

We agree with the protester.¹⁴ The protest is not a challenge to the sources identified in the solicitation as approved, but instead, is a challenge to the identity of LSL and its qualification for award. The RFP required that the damper assemblies be procured from a source identified as approved in the solicitation. RFP at 9. The Qualification Clause required that a product, manufacturer, or source be qualified prior to award whether or not the product, manufacturer, or source was included on the qualified products, manufacturer, or bidders list. RFP at 19. Therefore, the protester's argument--that LSL was not the same entity identified as an approved source in the solicitation and could not meet the Qualification Clause at the time of award--could only have been brought after award. See e.g., Lavi Sys., Inc., B-282295, June 24, 1999, 99-2 CPD ¶ 7.

Propriety of Award

Uncertainty as to the identity of an offering entity renders an offer technically unacceptable, since ambiguity as to an offeror's identity could result in there being no party bound to perform the obligations of the contract. W.B. Constr. & Sons, Inc., B-405874, B-405874.2, Dec. 16, 2011, 2011 CPD ¶ 282 at 4; See also Kollsman, Inc., B-413485 et al., Nov. 8, 2016, 2016 CPD ¶ 326 at 5, 6-7. Generally, the entity awarded the contract should be the entity that submitted the initial proposal. Raytheon Co., B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 6. The information readily available, such as CAGE codes and DUNS numbers, must reasonably establish that differently-identified entities are in fact the same concern. Raymond Express Intl., LLC, B-409872.3 et al., Sept. 11, 2015, 2015 CPD ¶ 265 at 6-7. CAGE codes are assigned to discrete business entities for a variety of purposes (e.g., facility clearances, pre-award surveys, and tracking the ownership of technical data) to dispositively establish the identity of a legal entity for contractual purposes. Gear Wizzard, Inc., B-298993, Jan. 11, 2007, 2007 CPD ¶ 11 at 2; National Found. Co., B-253369, Sept. 1, 1993, 93-2 CPD ¶ 143 at 2 n.1. Similarly, the DUNS numbering system is established by Dun & Bradstreet Information Services, and discrete 9-digit numbers are assigned for purposes of establishing the precise identification of an offeror or contractor. URS Group, Inc., B-402820, July 30, 2010, 2010 CPD ¶ 175 at 4. On an SF 33, the CAGE code and DUNS number are used to identify the entity that is the offeror for a given procurement. Id.

The protester contends that the award was improper because the CAGE code identified in LSL's proposal did not match the approved source's CAGE code required by the RFP. Protest at 12. Additionally, the protester states that because CAGE codes and DUNS numbers are used to identify discrete businesses, it was unreasonable for the agency to conclude that the presence of two different CAGE codes at the same address

¹⁴ Despite being given an opportunity, the agency failed to respond to the protester's timeliness argument in the initial and supplemental agency report.

must belong to the same entity. Supp. Comments at 6. Finally, the protester asserts that the agency's explanation and the record do not adequately explain the basis for the agency's conclusions on this matter. Supp. Comments at 3-7. In support of its arguments, United offers a February 24, 2014 decision in which DLA sustained an agency-level protest against a similar award to Logistical Support, LLC for damper assemblies identified by the same NSN as this solicitation. Protest, Exh. 4, 2014 Agency-level Protest, at 1. After sustaining the protest, DLA cancelled that award. Id. In that decision, DLA responded to United's assertion that Logistical Support, LLC "does not exist any longer," by "conclud[ing] that the company [that] submitted a quotation in the name of Logistical Support LLC lacked the capacity to do so."¹⁵ Id.

In response to the instant solicitation, DLA states that the approved source has been an approved source of supply since November 25, 2013, and was properly listed as an approved source for this item in the solicitation. COS/MOL at 5. Additionally, the agency contends that the use of the administrative CAGE code approach was proper because it complied with FAR § 4.1803(a), which requires that contracting officers verify an offeror's CAGE code in SAM prior to award. Supp. COS/MOL at 2. The agency also asserts that the use of CAGE code 55064 for administrative purposes was appropriate based on LSL's indication that both CAGE codes were associated with the same facility in the SAM registration. Id.

On this record, which lacks contemporaneous documents to explain the agency's CAGE code conclusion, we sought more information regarding how the agency determined that LSL and the approved source were the same entity, given that the CAGE code, DUNS number, and DBA name for each entity appeared to be different.¹⁶ GAO Questions to DLA, June 27, 2018, at 2.

In response, the agency explained that based on the SAM reports that it reviewed during the evaluation phase, "there were different CAGEs, but SAM listed the CAGEs as being part of the same parent company. Each CAGE is required to have a different DUNS number even if they are in the same location." DLA Response to GAO Questions, at 2. The agency's response also included a SAM Registration and a Dun & Bradstreet business information report (D&B Report), both of which were dated April 26, after the protest was filed. The SAM registration printout included an "entity list" that includes on the same registration page as the approved source the following

¹⁵ This decision does not include the CAGE codes for these entities, and states that it is unclear whether LSL "remains as a viable business entity." Protest, Exh. 4, 2014 Agency-Level Protest, at 1.

¹⁶ On the SAM database, the approved source's DUNS number is 019640247 and its DBA name is RTC Aerospace. Supp. Protest and Comments, Exh. 4, Approved Source Feb. 27, 2018 SAM Submission. LSL's DBA name is Cliffdale MFG and its DUNS number is 032755097. AR, Tab 7, LSL Proposal, at 1. Both entities are located at the same address on Prairie Street in Chatsworth, California.

businesses and their associated DUNS numbers: Cliffdale Manufacturing LLC (008506049), Logistical Support, LLC (019640247), Logistical Support, LLC (032755097), RTC Aerospace – Fife Division, Inc. (117344531), and RTC Aerospace, LLC (079820295). Agency Response to GAO, Attach. 2, SAM Registration and D&B Report. The D&B Report for the approved source states that LSL is an affiliate of the approved source. Id.

Here, the solicitation identified the damper assemblies as a source control item that was required to be procured from an approved source as identified by its part number and CAGE code. RFP at 9. The record shows that LSL’s proposal identified the correct part number, but did not reference CAGE code 55064, the approved source CAGE code. Instead, throughout its proposal, including its SAM registration and the SF 33, LSL identified its CAGE code as 1HFE7.¹⁷ Additionally, while the SAM registration shows that the entities associated with CAGE codes 55064 and 1HFE7 are both named Logistical Support, LLC and have the same address, each entity possesses a different CAGE code, DUNS number, DBA name, and activation date. The record also shows that the SAM registration and D&B report offered by the agency identify the existence of multiple entities associated with the Prairie Street address and parent/affiliate relationship between LSL and the approved source.

In our view, the record does not clearly establish that the offeror LSL is the same legal entity as the approved source or that this LSL was qualified to offer a source control item. Various sources in the record demonstrate that the two entities had different identifying information: LSL’s proposal, the SAM registration retrieved by DLA, and the D&B report. The agency itself even asserts that “there were different CAGEs . . . listed . . . as being part of the same parent company.” Yet, despite these discrepancies, the record is absent of any evidence documenting the specific relationship between the two entities. Moreover, the agency does not explain how it concluded that the entities being co-located at the same facility allowed LSL to use the approved source’s CAGE code, other than the agency’s conclusory statements that the administrative cage code approach was permissible.¹⁸

In short, the record is devoid of substantive evidence to show that LSL was either the approved source identified in the solicitation or was qualified to offer a source control item. Given that the RFP identified the damper assemblies as a critical application item and a source control item required to be procured from either an approved source, or an entity that was qualified prior to award, on this record, we find unreasonable the

¹⁷ As stated above, LSL supplied a CAGE code of 34705 when identifying the CAGE code associated with the location where the supplies would be inspected. AR, Tab 7, LSL Proposal, at 48.

¹⁸ While we recognize that the SAM registration and D&B Report provided by the agency appear to show a connection between LSL and the approved source, the record, including LSL’s proposal, does not outline this relationship.

agency's determination that LSL's proposal was technically acceptable. See W.B. Constr. & Sons, Inc., supra, at 5-6 (identity of offering entity uncertain where its business name, CAGE code, and DUNS number differed from awardee's); cf. Raymond Express Intl., LLC, supra at 6-7 (despite using multiple names in proposal, offering entity reasonably found to be awardee where the SAM registration matched the sole CAGE code and DUNS number identified in the proposal). Accordingly, we sustain the protest.

Recommendation

We recommend that DLA determine and document whether the awardee, LSL, is qualified and thereby eligible for award. If the firm is not eligible for award, the agency should terminate the firm's contract for the convenience of the government and make award to United, if otherwise appropriate. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Thomas H. Armstrong
General Counsel