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Decision

Matter of: Engility Corporation

File: B-416650; B-416650.2

Date: November 7, 2018

Edward J. Tolchin, Esq., Offit Kurman Attorneys at Law, for the protester.
Wade L. Brown, Esq., and Felix O. Onyango, Esq., Department of the Army, for the agency.
Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's rejection of a proposal for the issuance of a task order is denied where the agency reasonably concluded that a different firm, rather than the protester, submitted the proposal.

DECISION

Engility Corporation, of Chantilly, Virginia, challenges the rejection of what the protester contends was the proposal it submitted in response to task order request (TOR) No. W909MY-18-R-0001, which was issued by the Department of the Army, U.S. Army Materiel Command, for contractor logistics sustainment services. Engility contends that the agency unreasonably concluded that the proposal was submitted by the protester's proposed subcontractor, rather than by the protester.

We deny the protest.

BACKGROUND

The Army issued the TOR on June 8, 2018, seeking proposals to provide contractor logistic sustainment services in support of the Army Product Manager, Force Protection Systems. Agency Report (AR), Tab 3a, TOR, at 1. The competition was limited to firms holding one of the agency's Joint Enterprise-Contracted Logistics and Services Support (JE-CLaSS) multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts in the

unrestricted suite of contracts.¹ COS/MOL² at 2. The TOR anticipated the issuance of a cost-plus-fixed-fee task order with a base period of 1 year and two 1-year options. TOR at 2.

The TOR advised offerors³ that proposals would be evaluated on the basis of cost, and the following three non-cost factors: (1) technical, (2) past performance, and (3) small business participation plan. TOR at 14. For purposes of award, the TOR stated that the technical factor was “significantly more important” than the past performance factor, the past performance factor was “more important” than the small business participation plan factor, and that all non-cost factors, when combined, were “approximately equal” to cost. Id.

The solicitation required offerors to submit three proposal volumes: (1) technical, (2) cost/price, which consisted of a cost narrative, cost proposal, and sanitized cost proposal (*i.e.*, all rates and costs removed); and (3) small business participation plan. Id. at 3, 11. The solicitation required offerors to submit proposals through the Army Aviation and Missile Research Development and Engineering Center (AMRDEC) Safe Access File Exchange (SAFE) web portal by the closing date of July 9. Id. at 2. As discussed in detail below, the TOR permitted an offeror’s subcontractors to submit confidential cost information directly with the agency, as opposed to providing it to the offeror to submit. Id.

Engility holds an unrestricted JE-CLaSS contract, and STS International, Inc., holds a restricted small business JE-CLaSS contract. COS/MOL at 1. On June 25, STS submitted a request to the Army to novate Engility’s unrestricted contract to STS.⁴ On

¹ The agency awarded JE-CLaSS IDIQ contracts in a restricted small business suite and an unrestricted suite. Contracting Officer’s Statement/Memorandum of Law (COS/MOL) at 2. The JE-CLaSS contracts provide that task orders with anticipated values at or below \$5 million will be competed in the restricted suite, and task orders with values above \$5 million will be competed in the unrestricted suite. See AR, Tab 2c, JE-CLaSS Unrestricted Suite Contract, at 34; Tab 2d, JE-CLaSS Restricted Suite Contract, at 34.

² References to the contracting officer are to the individual responsible for the TOR, unless otherwise noted.

³ Although firms who hold IDIQ contracts and compete for orders are referred to as “vendors,” the record here refers to such firms as offerors, and to the awardee of such an order as the “contractor” or “prime contractor.” Our decision uses the terms in the record for consistency.

⁴ With regard to transferring and/or novating federal contracts, the Federal Acquisition Regulation (FAR) states as follows:

(continued...)

July 8, Engility filed proposal documents through the AMRDEC web portal, which consisted of a cover letter, technical volume, and the sanitized cost volume. AR, Tab 5a, Engility AMRDEC Submission. Also on July 8, STS filed proposal documents through the AMRDEC web portal, which consisted of a cover letter, and the cost and small business participation volumes of the proposal. AR, Tab 5b, STS AMRDEC Submission.

On July 25, the Army advised STS that it would not approve the novation request. AR, Tab 8b, Letter from Agency to STS, July 25, 2018, at 1. The agency separately advised STS that because the agency did not approve the novation request, STS's proposal responding to the TOR would not be considered for award. AR, Tab 8d, Letter from Agency to STS, July 25, 2018, at 1. In subsequent correspondence with STS, the agency explained that it viewed the proposal as having been submitted by STS, which does not have an unrestricted JE-CLaSS contract, rather than Engility. AR, Tab 8f, Letter from Agency to STS, Aug. 2, 2018. This protest followed.⁵

DISCUSSION

Engility argues that the Army unreasonably concluded that STS, rather than Engility, submitted the proposal in response to the TOR, and that the agency therefore improperly rejected the proposal. For the reasons discussed below, we find no basis to sustain the protest.

Where an agency awards multiple-award IDIQ contracts, orders may only be placed with the firms who received one of the contracts. See 10 U.S.C. § 2304d; FAR § 16.505(b); Florida State College at Jacksonville, B-402656, June 24, 2010, 2010 CPD ¶ 146 at 6 n.5. Our Office has explained that uncertainty as to the identity of an offering

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(a) 41 U.S.C. 6305 prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of--(1) All the contractor's assets; or (2) The entire portion of the assets involved in performing the contract. . . .

FAR § 42.1204. An agency's decision whether to approve or reject a novation is a matter of contract administration that our Office does not review. See 4 C.F.R. § 21.5(a); Bosma Mach. & Tool Corp., B-257443.2, B-257443.3, Oct. 17, 1994, 94-2 CPD ¶ 143 at 4.

⁵ The proposed cost submitted by STS is greater than \$25 million. AR, Tab 6h, Cost Summary. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award IDIQ contracts issued by a defense agency where the task order exceeds \$25 million. 10 U.S.C. § 2304c(e)(1)(B).

entity renders an offer technically unacceptable, since ambiguity as to the offeror's or vendor's identity could result in there being no party that is bound to perform the obligations of the contract. Dick Enters., Inc., B-259686.2, June 21, 1995, 95-1 CPD ¶ 286 at 1. 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 provided to identify an offeror or vendor, such as a commercial and government entity (CAGE) code or data universal numbering system (DUNS) number, must correspond to the firm submitting the proposal.⁶ See Raymond Express Int'l, LLC, B-409872.3 et al., Sept. 11, 2015, 2015 CPD ¶ 265 at 6-7.

As relevant here, the TOR stated that the cost volume must contain the following:

Identifying Information. The name and address of the Offeror; solicitation number; name, email address, and phone number of the point of contact and alternate; and a list containing either the [DUNS] number or the [CAGE] code for the Prime Contractor and each subcontractor.

TOR at 8. Offerors were also to include signed quotations from subcontractors, including a specified level of detail to support the quotation. Id. at 9, 11. However, if a proposed subcontractor deemed the information proprietary, the subcontractor could submit the information directly to the government. Id. at 11. Specifically, the TOR stated:

Subcontractors, not submitting proposals through the Prime, shall submit proposals directly to the Government via the AMRDEC SAFE. All subcontractor proposals shall clearly indicate the Prime Contractor for which they are proposing within the proposal and file name.

Id. at 2.

As discussed above, STS submitted a request to the agency on June 25 that Engility's JE-CLaSS unrestricted contract be novated to STS. This novation request stated that Engility and STS "closed a transaction described in an Asset Purchase Agreement dated June 6, 2018, whereby STS acquired all Engility assets directly related to the performance of Engility's duties under" the JE-CLaSS contract. AR, Tab 7, Novation Request, June 25, 2018, at 1.

⁶ CAGE codes are assigned to discrete business entities for a variety of purposes to dispositively establish the identity of a legal entity for contractual purposes. See FAR subpart 4.18; Gear Wizzard, Inc., B-298993, Jan. 11, 2007, 2007 CPD ¶ 11 at 2. Similarly, a DUNS number, established by Dun & Bradstreet Information Services, is a discrete 9-digit number assigned to a business that can also be used to precisely identify an offeror or vendor. URS Group, Inc., B-402820, July 30, 2010, 2010 CPD ¶ 175 at 4.

Also on June 25, STS's vice-president contacted the contracting officer for the JE-CLaSS contract to advise that STS and Engility intended to submit a proposal in response to the TOR. Decl. of STS Vice-President, Aug. 21, 2018, at 1. The STS vice-president states that he advised the contracting officer that "Engility would submit the technical proposal and sanitized cost proposal under its cover letter, and STS would present its confidential cost narrative, cost proposal, indirect cost support, and subcontracting plan under its cover letter." Id. The STS vice-president further states that he "explained to [the contracting officer] that the technical proposal would indicate that STS would perform the work," and that the contracting officer "agreed with this approach." Id.

In response to the declaration filed by the STS vice-president, the JE-CLaSS contracting officer filed a declaration acknowledging that the STS vice-president "notified me of Engility's/STS' intent to [submit a proposal] and he advised that their proposal would be submitted on Engility cover letter/template." AR, Tab 9, Decl. of JE-CLaSS Contracting Officer, Aug. 31, 2018, at 1. The JE-CLaSS contracting officer, however, disagrees with other representations in the STS vice-president's declaration, stating that "[n]o precise explanation was provided about which party would be responsible for submitting different volumes of the proposal as described by [the STS vice-president's] affidavit." Id. The JE-CLaSS contracting officer further states that "[a]dvice for proposal submission was neither requested by [STS's vice-president] nor provided by myself." Id.

As noted, Engility's proposal submission consisted of three files uploaded through AMRDEC: (1) a cover letter, (2) the technical volume of the proposal (volume 1), and (3) the sanitized cost proposal. AR, Tab 5a, Engility AMRDEC Filing Notice. The Engility cover letter stated:

Engility LLC (Engility), is pleased to submit a proposal in support of the Non-Intrusive Inspection System (NIIS) Contractor Logistics Support effort. . . .

Engility has entered into an Administrative Subcontract with STS International, Inc. pursuant to the purchase of the business associated with the JE-CLaSS Indefinite Delivery/Indefinite Quantity (IDIQ) prime contract (W911SR-16-D-0014). The sale of the business inclusive of the JE-CLaSS contract is complete and novation is pending Government approval.

AR, Tab 6b, Engility Cover Letter, at 1. The cover letter stated that "[s]hould you have any questions regarding this submission, please contact the undersigned" Engility points of contact. Id.

STS's proposal submission consisted of five files: (1) a cover letter, (2) the cost narrative volume of the proposal (volume 2), (3) the unsanitized cost proposal spreadsheet, (4) an indirect cost support spreadsheet, and (5) the small business

participation plan volume of the proposal (volume 3). AR, Tab 5b, STS AMRDEC Filing Notice. The subject letter of the STS cover letter was titled, "Engility Proposal Submission." AR, Tab 6a, STS Cover Letter, at 1. The cover letter stated as follows:

STS International (STS) is pleased to submit a proposal in support of the Non-Intrusive Inspection System (NIIS) Contractor Logistics Support effort. . . .

STS has entered into an Administrative Subcontract with Engility pursuant to the purchase of the business associated with the JE-CLaSS Indefinite Delivery/Indefinite Quantity (IDIQ) prime contract (W911SR-16-D-0014). The sale of the business inclusive of the JE-CLaSS contract is complete and novation is pending Government approval. After the novation is completed the authorized personnel referenced below will remain as the points of contact for all aspects of this proposal and the JE-CLaSS IDIQ.

Id. STS's cover letter also identified two "individuals [who] are authorized to conduct negotiations on behalf of STS International." Id.

On July 25, the Army advised STS that it would not approve the novation request. AR, Tab 8b, Letter from Agency to STS, July 25, 2018, at 1. On the same day, the agency also advised STS that, based on the decision to reject the request to novate the contract, the agency would not consider the proposal for the TOR:

On 25 July 2018, the JE-CLaSS Contracting Officer advised your company that . . . it would not be in the Government's best interest to novate contract W911SR-16- D-0014 from Engility, LLC (Engility) to STS. Therefore, the Task Order Proposal received by the Government from STS/Engility in response to [the TOR] will not be considered for award of the given requirement.

AR, Tab 8d, Letter from Agency to STS, July 25, 2018, at 1.

On July 27, STS responded to the letter rejecting its proposal, stating that the proposal was submitted under Engility's JE-CLaSS contract, and that STS was proposed as the subcontractor to Engility. AR, Tab 8e, Email from STS to Agency, July 27, 2018. The Army replied that "neither STS, nor Engility, conveyed in the proposal that STS was going to be the subcontractor for the effort," and that "based upon the documents provided in response to the [TOR], it's evident that STS submitted the proposal." AR, Tab 8f, Letter from Agency to STS, Aug. 2, 2018.

Engility argues that the Army unreasonably found that STS was the firm that had submitted the proposal. The protester does not dispute that the agency declined to approve the request to novate its contract to STS, nor does it dispute that STS is ineligible to compete for the issuance of the task order under the TOR as a prime contractor because it does not have an unrestricted JE-CLaSS contract. Instead, the

protester contends that the record shows that the proposal was submitted under Engility's JE-CLaSS contract, with the anticipation that STS would perform 100 percent of the work. Protester's Comments, Sept. 14, 2018, at 4-5. For this reason, even though the agency rejected STS's novation request, the protester argues that the agency could still issue the task order to Engility. The protester cites the following primary arguments in support of its position: (1) because the agency rejected the novation request, Engility remained an eligible contractor under the unrestricted JE-CLaSS contract; (2) the cover letters submitted by Engility and STS each referred to the "Engility Proposal"; (3) the TOR permitted subcontractors to submit separate proposal volumes; and (4) neither the JE-CLaSS contract nor the TOR prohibited offerors from proposing to subcontract 100 percent of the work. Id. at 4-6.

The Army acknowledges that, regardless of the status of any business transactions between Engility and STS, the agency's refusal to agree to the novation means that Engility remains the JE-CLaSS unrestricted contractor. Agency Response to GAO Questions, Oct. 18, 2018, at 1. The agency contends, however, that the record, on the whole, shows that STS was the firm that submitted the proposal. Because STS did not have an unrestricted JE-CLaSS contract, the agency states it was required to reject the proposal.

First, the Army argues that there was doubt as to which firm was submitting the proposal because both the Engility and STS cover letters reference the novation request. See COS/MOL at 13. The agency notes that although the letters stated that Engility and STS had entered into an "Administrative Subcontract," neither letter specifically identified which firm was the prime contractor. See AR, Tab 6b, Engility Cover Letter, at 1; Tab 6a, STS Cover Letter, at 1. The agency also notes that the proposal filings did not provide a copy of the referenced subcontracting agreement between STS and Engility.

Second, the agency argues that the proposals show that STS was intended to be the prime contractor. In this regard, the technical, cost narrative, and small business participation plan volumes of the proposal each state that they were "PREPARED BY: STS International, Inc." AR, Tab 6d, Technical Proposal (Vol. 1), Cover Page; Tab 6e, Cost Narrative (Vol. 2), Cover Page; Tab 6c, Small Business Participation Plan Proposal (Vol. 3), Cover Page. In response to the TOR's requirement to identify the "name and address of offeror" and either the DUNS number or the CAGE code for the "Prime Contractor and each subcontractor," TOR at 8, the cost narrative proposal identifies only STS and provides that firm's address, CAGE code, and DUNS number. AR, Tab 6e, Cost Narrative (Vol. 2), at 3. Additionally, the cost proposal identifies the role of STS as the "Prime Contractor." Id.

Moreover, all volumes of the proposal addressed how STS and STS's proposed team members would perform the contract. See, e.g., AR, Tab 6d, Technical Proposal (Vol. 1), at 1. In contrast, none of the proposal volumes mentions Engility, with the exception of a single reference in the cost proposal, which cites the name of an Excel spreadsheet, "ENGILITY-STC COST 070918.xlsx." AR, Tab 6e, Cost Narrative (Vol. 2),

at 4. The referenced Excel spreadsheet, however, does not mention Engility or contain any cost information concerning Engility. See AR, Tab 6h, Cost Support. The agency contends, therefore, that the proposals all reflected that STS had prepared the proposal and was intended to be the prime contractor. COS/MOL at 12.

To the extent Engility argues that the proposal anticipated an alternative to granting the novation request wherein Engility would remain the JE-CLaSS contractor and STS would perform 100 percent of the work under the TOR as a subcontractor to Engility, the protester does not cite any part of its proposal which describes this approach.⁷ As discussed above, neither the cover letters nor the proposal volumes address this matter; in fact, the word Engility is referenced only once in the proposal, in the file name of an Excel spreadsheet. Additionally, although subcontractors were permitted to submit confidential cost information directly to the agency, STS also submitted the entirety of the small business subcontracting plan volume directly to the agency. AR, Tab 6c, Small Business Participation Plan Proposal (Vol. 3), at 1.

In sum, we find that the Army reasonably concluded that STS, rather than Engility, was the firm that had submitted the proposal. While there are some elements of the record that support the protester's position that Engility and STS intended to jointly submit the proposal, the agency cites numerous elements of the proposal which reasonably establish doubt that Engility was intended to act as the prime contractor for this proposal. Because STS does not have an unrestricted JE-CLaSS contract and is ineligible for issuance of the task order under the TOR, we have no basis to find that the agency improperly rejected the proposal from the competition.

The protest is denied.

Thomas H. Armstrong
General Counsel

⁷ In response to a request from our Office, the Army acknowledges that the JE-CLaSS contract does not contain an express prohibition on subcontracting 100% of the work, but argues that the contract has requirements which preclude such an approach. Agency Response to GAO Questions, Oct. 18, 2018, at 1-2. The agency, however, did not evaluate the proposal to assess whether a technical approach involving subcontracting 100 percent of the work would be acceptable, nor did the agency assess whether Engility was a responsible contractor capable of performing the work notwithstanding the sale to STS of assets relating to the contract. See id. We therefore need not address the protester's argument that it is permissible for an offeror under the JE-CLaSS contract to propose that a subcontractor perform 100 percent of the work.