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Decision

Matter of: GBK Partnership, LLC-Constant Associates, Inc.

File: B-417039

Date: January 24, 2019

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GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the exclusion of the protester's quotation from the competition is denied where the procuring agency reasonably found that the protester was ineligible for award where its Federal Supply Schedule contract included an insufficient period of performance to cover the potential duration of the anticipated blanket purchase agreement.

DECISION

GBK Partnership, LLC-Constant Associates, Inc., a small business contractor teaming arrangement, of Oklahoma City, Oklahoma, challenges the exclusion of its quotation submitted under request for quotations (RFQ) No. 68HE0C18Q0084, which was issued by the Environmental Protection Agency (EPA), to establish a blanket purchase agreement (BPA) under the General Services Administration (GSA) Professional Services Federal Supply Schedule (FSS) No. 00CORP for environmental training and consulting services. The protester argues that the EPA improperly excluded its quotation on the basis that GBK's FSS contract has insufficient potential options to cover the BPA's entire potential period of performance.

We deny the protest.

BACKGROUND

The RFQ, which was issued on August 10, 2018, to six small businesses, including GBK-Constant, under the FSS Professional Services Schedule, and subsequently amended four times, sought quotations for a BPA to provide environmental training and

consulting services to the EPA Office of Water, Office of Ground Water and Drinking Water, Water Security Division. The RFQ contemplated the establishment of a BPA, against which the agency can place fixed-price orders up to a not-to-exceed amount of \$8 million. RFQ, attach. No. 1, Blanket Purchase Agreement, at 3. The anticipated BPA would include a base year, and four, 1-year options; if all available options are exercised, the BPA's period of performance would extend through September 30, 2023. RFQ at 1-2. Relevant to the issues in this protest, the RFQ specified that: "[t]he period of performance of this [BPA] shall be from the date of award or 10/01/2018 (whichever is later) through 09/30/2019 unless the optional periods are exercised in accordance with [Federal Acquisition Regulation (FAR) clause] 52.217-9." Id. at 31.¹

The BPA provides that it will be entered into between EPA and the contractor pursuant to FAR § 8.405-3, Blanket Purchase Agreements (BPAs), and the contractor's applicable GSA FSS contract. RFQ, attach. No. 1, Blanket Purchase Agreement, at 2. Section 8.405-3(d)(3) of the FAR provides that: "[c]ontractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance."² GBK's applicable FSS contract also includes clause I-FSS-646, Blanket Purchase Agreements, which similarly provides, in relevant part, that GBK may enter into a BPA with an ordering activity provided that: "[t]he period of time covered by such agreements shall not exceed the period of the contract including option year period(s)." Agency Report (AR), Tab E, GBK FSS Contract Terms & Conditions, at 188.

On September 5, GBK-Constant timely submitted a quotation in response to the RFQ. AR, Tab B.1, GBK-Constant Quotation. After reviewing the terms and conditions of GBK's and Constant's respective FSS contracts, the EPA contracting officer requested clarification from GSA as to the period of performance for GBK's FSS contract. Contracting Officer Statement at 2. GSA represented that GBK's applicable FSS contract is effective through August 18, 2022, with no additional option periods remaining. Id. at 2; AR, Tab C, Email from GSA, at 1.

Based on the information obtained from GSA, the EPA contracting officer determined that GBK-Constant was not eligible for award because GBK's FSS contract, which expires on August 18, 2022, would not cover the entire potential period of performance

¹ The BPA, included as an attachment to the RFQ, similarly defined the period of performance accordingly: "This BPA expires September 30, 2019 unless the optional periods are exercised in accordance with FAR [clause] 52.217-9." RFQ, attach. No. 1, at 3.

² The FAR further requires that the ordering activity contracting officer review the BPA and determine in writing, at least once a year (including, for example, at the time of exercising an option), whether the FSS contract, upon which the BPA was established, is still in effect. FAR § 8.405-3(e)(1)(ii).

of the BPA, which could extend through September 30, 2023. AR, Tab D.1, EPA Notice to GBK-Constant of Exclusion from the Competition, at 1. Among the bases for her determination that GBK-Constant was ineligible for award, the contracting officer specifically found that the EPA could not establish a BPA with the protester under the terms of FAR § 8.405-3(d)(3) and clause I-FSS-646 of GBK's FSS contract because the potential period of performance of the resulting BPA would exceed the period of GBK's FSS contract. Id. at 1-2. This protest to our Office followed.

DISCUSSION

GBK-Constant primarily challenges EPA's interpretation of FAR § 8.405-3(d)(3) and GSA FSS contract clause I-FSS-646 as requiring an offeror's FSS contract to have a sufficient period of performance to cover the entire potential period performance of the resulting BPA. In this regard, the protester contends that the BPA's period of performance should be interpreted as only the base period of performance, unless and until any of the four potential option periods are exercised. With that interpretation of the BPA's period of performance, GBK-Constant argues that FAR §§ 8.405-3(d) and (e), when read in conjunction, support its interpretation that it needed only to demonstrate that its FSS contract, inclusive of options, had a sufficient period of performance to cover the base year of performance of the BPA.³

The agency responds that GBK-Constant's proffered interpretation of the RFQ's period of performance provision and of the applicable FAR and FSS contract provisions are unreasonable and contrary to the plain meaning of those provisions. The agency argues that the RFQ's period of performance reasonably should be interpreted as including not just the base period, but the entire potential period of performance inclusive of all potential option periods. EPA argues that such an interpretation is the only reasonable interpretation, as the protester's interpretation would result in EPA

³ GBK-Constant raises other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protester's arguments and find that they do not provide a basis on which to sustain the protest. For example, the protester argues that the EPA was required to refer the matter of its alleged incapability of performing to the Small Business Administration for review under that agency's certificate of competency program pursuant to 13 C.F.R. § 125.5 and FAR subpart 19.6. We disagree. We have repeatedly recognized that where a proposal or quotation, on its face, should lead an agency to the conclusion that an offeror has not agreed or cannot agree to comply with a material term of the solicitation, the matter is one of the proposal's or quotation's acceptability, not a matter of responsibility. MT & Assocs., LLC, B-410066, Oct. 17, 2014, 2014 CPD ¶ 326 at 6; TYBRIN Corp., B-298364.6, B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 6. Here, EPA did not make a determination that the protester was nonresponsible. Rather, it reasonably determined that GBK-Constant did not possess sufficient option periods on GBK's applicable FSS contract compared to the potential duration of the resulting BPA, and therefore was incapable of satisfying a material solicitation requirement.

evaluating quotations on an unequal basis, in that some vendors would not be capable of performing the full potential period of performance of the BPA. If the BPA's period of performance is properly interpreted as including all of the potential options, which could extend the BPA through 2023, then the agency contends that the plain language of the applicable FAR and FSS contract provisions required exclusion because GBK's FSS contract, which expires in 2022, would not cover the BPA's period of performance.

Pursuant to 4 C.F.R. § 21.3(j), our Office invited GSA to participate in the protest. On December 13, GSA submitted a brief in support of EPA's position. Specifically, GSA agreed with EPA's interpretation of FAR § 8.405-3(d)(3) and clause I-FSS-646 as requiring that the GSA FSS contract against which the BPA is issued must have sufficient options to cover the entirety of the period of performance of the BPA, inclusive of all potential options. GSA argued that such an interpretation was necessary because, unlike an order, a BPA cannot survive the expiration of the underlying FSS contract, citing Canon USA, Inc., B-311254.2, June 10, 2008, 2008 CPD ¶ 113. Additionally, such an interpretation is necessary to ensure that all vendors are competing and being evaluated on a common basis, where some vendors are capable of performing the entire potential period of performance of the BPA versus those that would be unable to do so because their respective FSS contracts do not have a sufficient period of performance commensurate to the BPA's potential period of performance. For the reasons that follow, we find no basis on which to sustain the protest.

Although the parties offer competing interpretations of the applicable FAR and FSS contract provisions, at the crux of this protest is the parties' competing interpretations of the RFQ's period of performance provision. Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2.

GBK-Constant's interpretation of the RFQ's period of performance as being restricted to the base period of performance is unreasonable because it effectively reads out of the provision the qualifying language "unless the optional periods are exercised." RFQ at 31. Although the RFQ's conditionally stated period of performance provision is worded differently than other period of performance provisions, which refer to both the base and option periods, the RFQ's provision nevertheless does not reasonably support the protester's interpretation that the RFQ sought to exclude the option periods from the BPA's anticipated period of performance. Rather, the RFQ, when read in reasonable context, conveys that the BPA's period of performance anticipates a base and four optional periods. See, e.g., RFQ at 1-2 (including separate contract line item numbers for the base and option periods); id., attach. D, Quotation Instructions, at 5 (requiring vendors to include labor category and pricing information for each of the base and option periods). Thus, in our view, the only reasonable interpretation of the RFQ's

period of performance provision is the one advanced by EPA and GSA, that is, the period of performance reasonably contemplates the base and four option years.

In addition to being inconsistent with the RFQ's plain text, GBK-Constant's proposed interpretation would also frustrate EPA's efforts to acquire a BPA with a potential five-year period of performance. Here, GBK-Constant does not dispute that GBK's applicable FSS contract will expire prior to the completion of the third option year, and, as a result, EPA will be unable to place further orders or exercise the fourth potential option year. Indeed, our Office has recognized that a FSS BPA is not established with the contractor directly, but rather is established under the contractor's FSS contract, such that the FSS BPA orders "ultimately are to be placed against the successful vendor's FSS contract." Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 1-2 n.1. Thus, as we have further recognized, when an agency intends to place an order under an FSS BPA, the vendor must have a valid FSS contract in place because that contract is the means by which the agency satisfies the competition requirements of the Competition in Contracting Act in connection with any orders issued under the BPA. Canon USA, Inc., supra, at 3-4.

Based on our conclusion that the BPA's anticipated period of performance is the entire potential period of performance, inclusive of all options, the only reasonable interpretation of FAR § 8.405-3(d)(3) and FSS contract clause I-FSS-646 is that GBK-Constant was ineligible for award because its FSS contract, which expires in August 2022, does not have sufficient duration to cover the entire period of performance of the resulting BPA, which if all options are exercised would expire in September 2023. Therefore, we have no basis to find that the EPA's decision was unreasonable or inconsistent with applicable procurement law or regulation.

The protest is denied.

Thomas H. Armstrong
General Counsel