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Decision

Matter of: NCS Technologies, Inc.

File: B-416936

Date: January 11, 2019

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Richard L. Hatfield, Esq., Kelly Zeng, Esq., and Holly H. Styles, Esq., Department of the Treasury, for the agency.
John Sorrenti, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester lacks the requisite legal interest to challenge the agency's award decision where protester would not be next in line for award even if its protest were sustained.

DECISION

NCS Technologies, Inc. (NCS), of Gainesville, Virginia, protests the issuance of a delivery order to FCN, Inc., of Rockville, Maryland, by the Department of the Treasury, Internal Revenue Service (IRS), under request for quotations (RFQ) No. 5000032988, for personal computers. NCS protests that the agency improperly relaxed mandatory technical requirements in making award to FCN.

We dismiss the protest.

BACKGROUND

Pursuant to a policy issued by the Office of Management and Budget (OMB), the IRS must fulfill a majority of its computer requirements using one of several standardized computer configurations referred to as government-wide strategic solutions (GSS). Agency Report (AR), Tab 2, Contracting Officer Statement (COS), at 2. The OMB policy also requires that the IRS acquire GSS-configured computers through one of three governmentwide acquisition contracts (GWACs): (1) National Aeronautics and Space Administration (NASA) solutions for enterprise-wide procurement (SEWP);

(2) General Services Administration information technology schedule 70; and (3) National Institutes of Health Information Technology Acquisition and Assessment Center Chief Information Officer Commodities and Solutions.¹ Id. For this procurement, the IRS used the NASA SEWP solution.² AR, Tab 7D, Award Decision Document, at 1.

The RFQ, issued on August 29, 2018, anticipated the award of a fixed-price delivery order for laptop computers. RFQ at 1, 3. The RFQ stated that the procurement “will use laptop configuration of GSS version 4” and listed the relevant minimum specifications that the laptops were required to meet. Id. at 3-4. The GSS version 4 laptop configuration requirements are the same across the three GWACs identified above, and the requirements in the RFQ were pulled directly from the NASA SEWP website.³ COS at 2. As relevant to this protest, the specifications for the computer’s central processing unit (CPU) required it to be the latest general processor technology and have specific, identified characteristics. RFQ at 3-4.

The agency sought to purchase 42,103 laptops with an option for 2,688 additional laptops. Id. at 3. To respond to the RFQ, vendors had to submit for their proposed laptop the part number, list price, any applicable discount, and provide an extended price. Id. at 1. The RFQ provided for award on the basis of the lowest-price technically acceptable (LPTA) quotation.⁴ Id. at 1. To be technically acceptable, the laptops had to meet all of the GSS version 4 requirements and specifications identified in the RFQ. Id. at 1, 3-4.

The IRS received quotations from six vendors, including NCS and FCN. COS at 5. The agency conducted an initial review of the quotations for completeness, then forwarded the three lowest-priced quotations to the program office for technical evaluation. AR, Tab 7d, Award Decision Document, at 2. The technical evaluation determined that all of the three lowest-priced quotations were technically acceptable. Id. As shown in the following chart, NCS’s quotation was the fifth highest in price and therefore was not forwarded to the program office for technical evaluation:

¹ The OMB policy requires that agencies satisfy at least 80% of their basic laptop and desktop requirements with one of the GSS configurations, and that civilian agencies leverage the three existing contract vehicles identified above to procure laptops or desktops. Memorandum for the Heads of Departments and Agencies, OMB M-16-02, *Subject: Category Management Policy 15-1: Improving the Acquisition and Management of Common Information Technology: Laptops and Desktops*, Oct. 16, 2015, at 3.

² The NASA SEWP is a multi-award GWAC focused on commercial information technology products that can be used by all federal agencies.

³ The NASA SEWP website is accessible at <https://www.sewp.nasa.gov/>.

⁴ The RFQ also stated that the agency would conduct a supply chain risk assessment, but that evaluation criterion is not at issue in this protest. RFQ at 1.

Vendor	Price	Technically Acceptable
FCN	\$34,353,416.86	Y
Vendor 2	\$34,674,084.02	Y
Vendor 3	\$34,701,902.59	Y
Vendor 4	\$38,998,573.45	N/A
NCS	\$40,315,534.39	N/A
Vendor 6	\$41,431,130.58	N/A

Id. The agency issued the delivery order to FCN because it proposed the lowest price and its proposed laptop was found to be technically acceptable. Following a debriefing, NCS timely filed a protest with our Office.

DISCUSSION

NCS argues that FCN's proposed computer did not comply with the CPU specifications listed in the RFQ, and that the agency thus relaxed a mandatory specification requirement in making award to FCN. Specifically, NCS asserts that in order to meet the CPU specifications, the laptop has to have an Intel vPro CPU, and that FCN's proposed laptop does not have an Intel vPro CPU.⁵ NCS argues that the agency's issuance of a delivery order to FCN therefore was improper.

NCS is not an interested party eligible to pursue its protest. In order for a protest ground to be considered by our Office, a protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award or failure to award a contract. 4 C.F.R. §§ 21.0(a)(1), 21.1; Design Eng'g, Inc., B-408336.3, May 6, 2014, 2014 CPD ¶ 144 at 10. A protester is an interested party to challenge the agency's evaluation of proposals where there is a reasonable possibility that the protester would be in line for award if its protest were sustained. SRA Int'l, Inc., NTT Data Servs. Fed. Gov't, Inc., B-413220.4 et al., May 19, 2017, 2017 CPD ¶ 173 at 28; Ridoc Enter., Inc., B-292962.4, July 6, 2004, 2004 CPD ¶ 169 at 9. In this regard, where, as here, there is an intervening offeror who would be in line for the award even if the protester's challenges were sustained, the intervening offeror has a greater interest in the procurement than the protester, and we generally consider the protester's interest to be too remote to qualify it as an interested party. See SRA Int'l, Inc., NTT Data Servs. Fed. Gov't, Inc., supra.

As discussed above, the record shows that in this LPTA procurement, there are at least two technically acceptable quotations that were lower-priced than NCS's quotation. Thus, in order to establish its status as an interested party, NCS was required to

⁵ Intel Corporation manufactures CPUs used in computers. According to the protester, vPro is a brand name and marketing term used by Intel for a set of computer hardware features associated with a particular CPU.

challenge the agency's evaluation of these two other intervening vendors, because even if NCS were correct that FCN's proposed laptop did not comply with the RFQ specifications, these other vendors, and not NCS, would have been next in line for award. See Booz Allen Hamilton Eng'g Servs., LLC, B-411065, May 1, 2015, 2015 CPD ¶ 138 at 11-12 (protester is not an interested party to pursue certain grounds in LPTA procurement where it failed to challenge intervening vendors that would be in line for award even if the protest grounds were sustained).

NCS argues that it did challenge the evaluation of these two vendors when it stated in its initial protest:

Since a non-vPro CPU can cost up to \$60 less per unit, the price presented by FCN and all other offerors who failed to propose compliant equipment is almost \$2.7 M less expensive than the compliant hardware proposed by NCS. NCS contends that its overall price represents the lowest price that can be presented for a fully compliant system that includes a v-Pro CPU and all other required hardware.

Protest at 7.⁶ However, this general statement--arguing essentially that the protester proposed the lowest price possible for a compliant laptop, and that any offeror with a lower priced quotation must have proposed noncompliant laptops--does not meet the requirement of our bid protest regulations that a protest include a detailed statement of the legal and factual grounds for the protest. 4 C.F.R. § 21.1(c)(4), (f).

Moreover, protesters have an affirmative obligation to diligently pursue information providing a basis for protest, and a protester's failure to utilize the most expeditious information-gathering approach under the circumstances may constitute a failure to meet its obligation in this regard. MILVETS Sys. Tech., Inc., B-411721.2, B-411721.3, Jan. 14, 2016, 2016 CPD ¶ 42 at 8. Here, the agency report revealed to NCS the identity of the two intervening vendors. Yet NCS's comments on the agency report made no mention of these two vendors and failed to challenge the agency's evaluation of their quotations. Accordingly, we find that NCS has not meaningfully challenged the agency's evaluation of the two intervening vendors and therefore is not an interested party for purpose of maintaining its protest.

The protest is dismissed.

Thomas H. Armstrong
General Counsel

⁶ After NCS filed its comments on the agency report, GAO requested that NCS show where in the record it had meaningfully challenged the agency's evaluation of the two intervening vendors, and in response, NCS pointed to this passage in its protest.