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Decision

Matter of: Dehler Manufacturing Company, Inc.--Reconsideration

File: B-416601.2

Date: February 13, 2019

Kristi Morgan Aronica, Esq., Weitz Morgan PLLC, for the protester.
Karl W. Kuhn, Esq., and Garry L Brewer, Esq., Department of the Army, for the agency.
Corps of Engineers, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration that does not demonstrate decision contains errors of fact or law is denied.

DECISION

Dehler Manufacturing Company, Inc. (Dehler), a small business of San Antonio, Texas requests reconsideration of our decision in Dehler Mfg. Co., Inc., B-416601, Oct. 25, 2018, 2018 CPD ¶ 368, denying Dehler's protest of the issuance of an order to Hi-Tech Bed Systems Corporation (Hi-Tech), under request for quotations (RFQ) No. W912DY-18-T-0089, issued by the Department of the Army, Army Corps of Engineers, for barracks furniture. Dehler alleges that our decision that the agency had not issued an order to Dehler and could therefore issue one to Hi-Tech was erroneous.

We deny the request for reconsideration.

BACKGROUND

The RFQ was issued as a small business set-aside, using the Federal Supply Schedule procedures of Federal Acquisition Regulation (FAR) subpart 8.4. Agency Report (AR), Tab 1, RFQ, at 1. The RFQ provided for the issuance of an order for various types of barracks furniture to the vendor that submitted the lowest-priced, technically acceptable quotation. Id. at 2, 10. To be eligible for award, vendors were required to be registered in the System for Award Management (SAM). Id. at 7.

As relevant to this request for reconsideration, Dehler submitted the lowest-priced quotation. Contracting Officer's Statement (COS) at 1. On May 9, 2018, the contract specialist for this procurement sent an email to Dehler, which read: "Please see Attached award for FT Irwin bldg. 864A please sign and return if you have any question please don't hesitate to contact me." AR, Tab 3, Contract Specialist Email, May 9, 2018 (9:18 a.m.). The document attached to the email was a Standard Form (SF) 1449, unsigned by the contracting officer. Id. Dehler signed and returned the SF 1449 to the contract specialist later that same day. AR, Tab 4, Dehler Email, May 9, 2018 (12:17 p.m.); Protest, Exh. E, Emails and Signed SF 1449.

On May 18, in response to a request from Dehler, the contract specialist sent Dehler a revised SF 1449 with an amended start date. AR, Tab 4, Contract Specialist Email, May 18, 2018 (10:14 a.m.). The revised SF 1449 provided to Dehler remained unsigned by the contracting officer. Id. at 3. On May 24, Dehler signed and returned the revised SF 1449. AR, Tab 5, Dehler Email, May 24, 2018 (2:06 p.m.); Protest, Exh. G, Emails and Signed SF 1449. On May 29, Dehler emailed the contract specialist, stating in pertinent part: "I am following up on this award to be sure a copy signed by the contracting officer will be forthcoming so that we can move forward with the project." AR, Tab 5, Dehler Email, May 29, 2018 (5:24 p.m.).

On May 30, Dehler's SAM registration expired. Protest, Exh. H, SAM Email Notification, May 29, 2018 (11:57 p.m.). On May 31, the contracting officer became aware of Dehler's expired SAM registration, and concluded that he could not issue an order to Dehler due to its expired registration. Supp. COS at 2. On July 13, the agency issued a signed order under the RFQ to Hi-Tech, the vendor that submitted the next lowest-priced quotation. Dehler protested the issuance of the order to Hi-Tech to our Office.

In its protest, Dehler argued that it possessed an active SAM registration at the time of award, and therefore the agency improperly determined that it was ineligible for award. Protest at 1. In this regard, Dehler asserted that the agency issued the order to Dehler on May 9, and a legally binding contract/order was formed on that date because Dehler's signing of the SF 1449 constituted acceptance of the government's offer. Comments at 2. According to the protester, the agency's award to Hi-Tech was improper because the order was issued under the same RFQ as Dehler's May 9 order.

In our decision, we found that Dehler was never issued an order under the RFQ because the contracting officer never signed the SF 1449 that was sent to Dehler. Dehler Mfg. Co., Inc., supra, at 3-4. Since Dehler was not issued an order signed by the contracting officer under the RFQ, Dehler's signing of the SF 1449 on May 9 or May 24, did not constitute acceptance.¹ Id. Consequently, we denied the protest and found the award to Hi-Tech was reasonable. Dehler then filed this request for reconsideration.

¹ We also noted that the SF 1449 was provided to Dehler for signature by a contract specialist who neither possessed authority himself nor was delegated authority to bind

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DISCUSSION

On reconsideration, Dehler asserts that our Office wrongly concluded that for an order to be valid it must be signed by the contracting officer. Req. for Reconsideration at 3-4. According to Dehler, there is no regulation or precedent that mandates that the contracting officer sign the order. Id. at 4. Rather, according to Dehler, the FAR does not define an offer in the context of an RFQ, except to say that it is the government's order that is the offer. Id. Dehler further asserts that under FAR § 4.101, the contracting officer signs a contract after the vendor so that it is not necessary for the order presented to be signed by the contracting officer in order for the vendor to accept the offer. Id.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must set out the factual and legal grounds upon which reversal or modification of the decision is deemed warranted, specifying any errors of law made or information not previously considered. Bid Protest Regulations, 4 C.F.R. § 21.14(a). Disagreement with our decision does not meet this standard. Veda, Inc.--Recon., B-278516.3, B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 4.

Dehler has not provided a basis for reconsideration. Here, the agency sent Dehler an SF 1449, which Dehler signed and returned to the agency. AR, Tab 4, Contract Specialist Email, May 18, 2018 (10:14 a.m.); AR, Tab 5, Dehler Email, May 24, 2018 (2:06 p.m.); Protest, Exh. G, Emails and Signed SF 1449. The SF 1449 contains a signature block for the contracting officer. The agency clearly intended for this to be an offer that Dehler could accept to create an order/contract. However, the contracting officer never signed the SF 1449 to award to Dehler.

While Dehler believes that the contracting officer was not required to sign the SF 1449 for the order to be valid, Dehler's acceptance of an unsigned SF 1449/offer would not result in a binding order. See Valencia Technical Services, Inc., B-223288, July 7, 1986, 86-2 CPD ¶ 40 (rejection of protester's unsigned offer and award to another offeror is proper since attempted acceptance of unsigned offer would not result in a binding contract). Further, as Dehler notes, FAR § 4.101 provides that the contracting officer should sign a contract after the offeror signs it, that is because when a contract is being awarded, it is the offeror making the offer and the government accepting the offer to form a contract. In the context of an RFQ, however, since it is the government

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the government with respect to the RFQ by the contracting officer. Dehler Mfg. Co., Inc., supra, at 3-4 (citing Contract Specialist Decl. at 1; Supp. Memorandum of Law at 1). The protester argues that the actions of the contract specialist who transmitted the SF 1449 to Dehler were ratified by the contracting officer so that an order was issued. Req. for Reconsideration at 4-5. Even if the contracting officer can ratify the actions of a contract specialist, the contract specialist did not sign the order. Accordingly, no order could have been issued.

making the offer, and the contractor accepting it to complete an order, see FAR § 2.101; Computer Associates International, Inc.--Recon., B-292077.6, May 5, 2004, 2004 CPD ¶ 110 at 3, the contracting officer should sign the order before sending it to the vendor.² Cf. Valencia Technical Services, Inc., supra (offer must be signed). Since both parties did not sign the order by May 30, the date Dehler's SAM registration expired, Dehler was not eligible to receive the order. Therefore, the award to Hi-Tech was reasonable.

The request for reconsideration is denied.

Thomas H. Armstrong
General Counsel

² In any case, even if it was acceptable for the contracting officer to sign the order after Dehler signed it, as noted, the contracting officer never signed it.