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Decision

Matter of: SSI Technology, Inc.

File: B-417299

Date: April 4, 2019

Bret S. Wacker, Esq., and Emily J. Baldwin, Esq., Clark Hill PLC, for the protester.
Tyson S. McDonald, Esq., Defense Logistics Agency, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that the awardee will not deliver the specific approved part identified in the solicitation is dismissed because whether an offeror delivers a product in accordance with the solicitation's specifications presents a matter of contract administration which our Office does not consider as part of our bid protest function.
2. Post-award protest alleging that an approved source identified in the solicitation is unable to produce the approved part is dismissed because it is, in essence, an untimely challenge to the terms of the solicitation.
3. Protest alleging that the awardee was required to submit at the time of quotation submission proof that it is an authorized dealer of an approved source identified in the solicitation is denied because the solicitation contained no requirement for an offeror to provide such proof with its quotation or obligate the agency to validate such relationship prior to award.

DECISION

SSI Technology, Inc., a small business, of Sterling Heights, Michigan, protests the issuance of a purchase order to Marine Air Supply Company, Inc. (MAS), a small business, of Frederick, Maryland, under request for quotations (RFQ) No. SPE7L2-19-T-1375, which was issued by the Defense Logistics Agency (DLA), for engine relay-solenoids. SSI, which is one of two authorized sources identified in the RFQ for the parts, alleges that MAS will not deliver an approved item, the other approved source is unable or unwilling to manufacture the approved item, and the agency unreasonably failed to validate whether MAS is an authorized dealer or distributor for the other approved source.

We deny in part and dismiss in part the protest.

BACKGROUND

On January 18, 2019, the agency issued the RFQ as an automated solicitation through DLA's Internet Bid Board System, and as a small business set-aside using the simplified acquisition procedures of Federal Acquisition Regulation part 13. RFQ at 1, 3. The RFQ incorporated the terms and conditions of DLA Master Solicitation for Automated Simplified Acquisitions (DLA Master Solicitation), which incorporated Procurement Note L04, Offers for Part Numbered Items. Id. at 1; DLA Master Solicitation at 1, 11. This procurement note applies when, as here, a solicitation identifies an item only by the name of the approved source's commercial and government entity (CAGE) code, a part number, and a brief description. DLA Master Solicitation at 11.

Relevant to the issues in this protest, Procurement Note L04 requires vendors to maintain, and furnish upon DLA's request, traceability documentation demonstrating the technical acceptability of the part offered. With respect to vendors acting as a dealer or distributor for an approved source, the note states, in relevant part, that:

- (1) The contracting officer may request evidence of the technical acceptability of the product offered. The evidence must be submitted within 2 days, or as otherwise specified, or the offer will not be considered.
- (2) For offers of exact product, offerors other than the approved manufacturing source must retain evidence and provide the traceability evidence of the identity of the item and its manufacturing source when requested by the contracting officer.

* * * *

- (iii) If the offeror is an authorized dealer/distributor, or manufactures the item for an approved source, a copy of the contractual agreement with, or express written authority of, the approved source to buy, stock, repackage, sell, or distribute the part. The agreement must specifically identify the exact item, or otherwise ensure that the offeror is authorized by the approved source to manufacture or distribute the exact item being acquired. If the agreement covers a general product line or is otherwise not product specific, the offeror must furnish additional documentation to address the exact item being acquired.

Procurement Note L04, at (g).

As additionally relevant here, the RFQ identified SSI and Safran Electrical & Power USA, LLC as the two sources approved to provide the product, and listed their respective product numbers and commercial and government entity (CAGE) codes. RFQ at 7. On January 18, MAS timely submitted a quotation; MAS offered the exact item required by the RFQ, specifically identifying the approved Safran product by part number and CAGE code. MAS Quotation at 2. MAS quoted an overall price of \$125,280. Id. at 1. On January 22, SSI timely submitted a quotation; SSI offered its approved item at a total price of \$165,004. SSI Quotation at 1. On January 31, DLA awarded purchase order No. SPE7L5-19-V-0968 to MAS.

DISCUSSION

SSI primarily asserts that MAS should have been found ineligible for award where DLA failed to require evidence, or otherwise validate, whether MAS is an authorized dealer or distributor of Safran's approved product. See Protest at 10-11. The protester further contends that the awardee, absent such authorization, will likely deliver other than an "exact product," and also questions whether Safran is capable of producing the approved product. See id. at 7-8. For the reasons that follow, we dismiss as legally insufficient SSI's allegations that MAS will not deliver an approved part, and dismiss as untimely SSI's allegations challenging Safran's ability to manufacture the approved part. We otherwise deny the protest.

First, with respect to SSI's allegations that MAS will not deliver an approved item, we dismiss the allegations because questions pertaining to whether MAS will perform the resulting purchase order in accordance with the RFQ's requirements present a question of contract administration, which we do not consider as part of our bid protest function. In its quotation, MAS specifically quoted the Safran approved part, and otherwise took no exceptions to the RFQ's specifications. MAS Quotation at 2. To the extent that SSI believes that MAS will not deliver the approved item, whether an offeror actually delivers a product in accordance with the solicitation's specifications presents a matter of contract administration which our Office does not consider as part of our bid protest function. 4 C.F.R. § 21.5(a); Connecticut Laminating Co., Inc., B-274949.2, Dec. 13, 1999, 99-2 CPD ¶ 108 at 5-6; Dantec Elecs., Inc., B-243580.2, Nov. 12, 1991, 91-2 CPD ¶ 444 at 5 n.2; Standard Mfg. Co., Inc., B-236814, Jan. 4, 1990, 90-1 CPD ¶ 14 at 3.

With respect to SSI's allegations that Safran, which was an approved source identified in the RFQ, is incapable or otherwise unwilling to manufacture the approved part, we find these allegations to be untimely raised where they effectively challenge Safran's approved source status. We have repeatedly found that where a firm is listed in a solicitation as an approved source, any protest challenging the firm's approved source status must be filed prior to the closing time for the receipt of proposals or quotations. Associated Aircraft Mfg. & Sales, Inc., B-293529, Mar. 22, 2004, 2004 CPD ¶ 121 at 2-3; Sonetronics, Inc., B-237267, Feb. 12, 1990, 90-1 CPD ¶ 178 at 2; Sealcraft Corp., B-236774.2, Dec. 26, 1989, 89-2 CPD ¶ 596 at 1. Thus, in order to have been timely, any protest challenging Safran's status as an approved source had to have been

filed prior to the closing time for quotations. SSI's post-award protest, therefore, is dismissed as untimely. See 4 C.F.R. § 21.2(a)(1).

With respect to SSI's allegation that the RFQ required MAS to provide evidence with its quotation that it is an authorized dealer or distributor for Safran's approved part, or the agency was otherwise required to validate such relationship prior to award, we find no basis upon which to sustain the protest where the RFQ provides no support for the protester's interpretation. 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. Magellan Fed., B-416254, B-416254.2, June 7, 2018, 2018 CPD ¶ 206 at 4. Here, the plain text of Procurement Note L04, which was incorporated into the RFQ, supports the agency's interpretation that MAS was not required to furnish evidence with its quotation of its dealer or distributor relationship with Safran.

Specifically, while Procurement Note L04(g)(2) required MAS to maintain supporting documentation of its relationship with Safran, the provision clearly indicates that such documentation need only be provided upon the request of the contracting officer. SSI points to no other provision of the RFQ or other request from DLA that would have compelled MAS to provide the documentation with its quotation. Similarly, the plain text of the provision provides that the contracting officer "may" request such documentation from an offeror, but the provision does not compel or obligate the contracting officer to request the information prior to award. Procurement Note L04(g)(1). As a result, we deny this contention.¹

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel

¹ To the extent SSI maintains that the agency should have validated MAS' relationship with Safran prior to award, SSI's argument presents a challenge of the agency's affirmative responsibility determination. As discussed above, the requirement for MAS to maintain, and upon request produce, supporting documentation of its relationship with Safran is a requirement that can be satisfied during contract performance and therefore does not affect the award decision except as a general responsibility matter. Pernix-Serka LP, B-407656.2, Jan. 18, 2013, 2013 CPD ¶ 70 at 4. Our Bid Protest Regulations generally preclude our review of a contracting officer's affirmative determination of an offeror's responsibility, absent circumstances not presented in this protest. 4 C.F.R. § 21.5(c). Accordingly, we dismiss the protester's allegations in this regard.