441 G St. N.W. Washington, DC 20548 Comptroller General of the United States

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Decision

Matter of: CC&C Management Services, LLC

File: B-417594

Date: August 28, 2019

Daniel S. Koch, Esq., and Christopher S. Denny, Esq., Miles & Stockbridge PC, for the protester.

Deborah K. Morrell, Esq., Department of Veterans Affairs, for the agency. Evan C. Williams, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest arguing that agency improperly issued an order under a Federal Supply Schedule that was different from the schedule under which the agency solicited quotations is denied where the record reflects that the agency posted the solicitation to the appropriate schedule on the General Services Administration's e-Buy system in accordance with Federal Acquisition Regulation subpart 8.4.

DECISION

CC&C Management Manufacturing Company, Inc. (CC&C Management), a service-disabled veteran-owned small business (SDVOSB), located in Bethesda, Maryland, protests the issuance of a purchase order to B&M Construction, Inc. (B&M), under request for quotations (RFQ) No. 36C25718Q9523, issued by the Department of Veterans Affairs (VA) for furnishing storage, installation and moving services. The protester argues that the agency improperly issued the order to B&M because it did not hold the Federal Supply Schedule (FSS) under which the RFQ was issued. Further, the protester argues that B&M's quotation should have been found to be technically unacceptable.

We deny the protest.

BACKGROUND

On June 14, 2018, the agency issued the RFQ through the General Services Administration's (GSA) e-Buy system, to vendors holding GSA FSS contracts under

Schedule 48, Special Item Number (SIN) 653-8, Office Relocation Services, with quotations due July 3, 2018. Agency Report (AR), Tab 3, RFQ and GSA Posting, at 1-3. On June 18, a representative from GSA notified the contracting officer that GSA FSS schedule number 48 was set to expire on June 30, 2018. Contracting Officer's Statement (COS) at 1. As a result, the agency cancelled the RFQ on June 20. Id. at 1-2.

On June 20, the agency re-issued the RFQ via the GSA e-Buy system, as a SDVOSB set-aside, using the FSS procedures of FAR § 8.405-2. AR, Tab 20, GSA Screenshot of RFQ Posting at 1. The agency posted the RFQ on e-Buy under the following two GSA FSS schedules:

- (1) 71 II K, Comprehensive Furniture Management Services, SIN 712 3, Relocation/Reconfiguration Management Solutions ("Schedule 71 II K");
- (2) 00CORP, Professional Services Schedule, Logistics Worldwide Services, SIN 874 503, Distribution and Transportation Logistics Services ("Schedule 00CORP").

Id. at 1-2; AR, Tab 14, E-mail from GSA to Agency, April 17, 2019 (4:00 p.m.).

The RFQ contemplated the issuance of a fixed-price order for furnishing storage, installation and moving services for VA facilities located in the Dallas, Texas, area for a base year and three 1-year option periods.² RFQ at 14-15, 18-19. Award of the order was to be made using a best-value tradeoff selection process, considering the following factors: past performance, technical, and price. Id. at 58-60.

The RFQ's statement of work (SOW) contained a list of services the contractor was to provide during performance. <u>Id.</u> at 14-18. As relevant to this protest, the SOW stated: "The contractor shall provide a storage facility that is 100,000 Sq[uare] F[ee]t and within 45 minutes from the Dallas VA Medical Center." <u>Id.</u> at 16.

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¹ The e-Buy system is an online RFQ tool designed to facilitate the submission of quotations for a wide variety of commercial goods and services under GSA schedules and technology contracts. https://www.gsa.gov/tools/supply-procurement-etools/ebuy (last visited Aug. 20, 2019). The e-Buy portal is specifically designated in Federal Acquisition Regulation (FAR) subpart 8.4 as GSA's electronic RFQ system where ordering activities may post requirements. FAR § 8.402(d).

² In Tab 3 of the AR, the agency provides a single document that combines the original RFQ and a screenshot from the e-Buy website on which the RFQ was posted with the re-issued RFQ and its corresponding e-Buy posting. For ease of reference, this decision will cite to the RFQ using its page numbers, and not the pagination of the combined document.

The agency received two quotations prior to the July 9 closing date; one from CC&C Management under Schedule 00CORP, and one from B&M under Schedule 71 II K. COS at 2. On April 3, 2019, the agency issued a purchase order under the RFQ to B&M valued at \$8,425,094.³ Id. at 1; AR, Tab 9, Award Decision, at 2. On April 15, CC&C Management was notified that it did not receive award. Protest at 5.

CC&C Management filed an agency-level protest on April 25, alleging that B&M was ineligible to compete under the RFQ because it does not hold a contract under Schedule 00CORP, and that the agency should have found B&M's quotation technically unacceptable for failure to meet a material requirement of the RFQ. AR, Tab 12, CC&C Management Agency Protest. On May 8, the agency denied CC&C Management's agency-level protest, and on May 20, CC&C Management filed this protest with our Office.

DISCUSSION

CC&C Management argues that the agency issued an order to B&M under a different schedule than the schedule under which the RFQ was issued on the e-Buy system. The protester also contends that the agency unreasonably found B&M's quotation technically acceptable. For the reasons discussed below, we find no basis to sustain the protest.⁴

RFQ Posting on GSA e-Buy

CC&C Management contends that the agency violated FAR subpart 8.4 when it issued the order to B&M under Schedule 71 II K because the agency had not properly posted the RFQ on e-Buy under that schedule. Protest at 5-8; Comments at 3-8. In response, the agency maintains that it validly posted the RFQ on e-Buy under Schedule 71 II K, and therefore properly issued the order to B&M.

The FSS program provides federal agencies with a simplified process for obtaining commonly used commercial supplies and services. FAR § 8.401(a). The FSS procedures, although streamlined, satisfy the requirements for full and open competition. 10 U.S.C. § 2302(2)(c); FAR § 8.404(a); Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 3. Where, as here, an

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³ The agency originally issued a purchase order under the RFQ to CC&C Management. COS at 1. B&M challenged the award to CC&C Management by filing an agency-level protest. <u>Id.</u> The purchase order issued to CC&C Management was subsequently terminated as a part of the agency's corrective action in response to B&M's agency-level protest. <u>Id.</u>

⁴ CC&C Management has presented arguments that are in addition to, or variations of, those discussed below. We have considered all of the protester's allegations and find none provide a basis to sustain the protest.

agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order, we will review the record to ensure that the agency's issuance of the order was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. See Carahsoft Tech. Corp., B-401169; B-401169.2, June 29, 2009, 2009 CPD ¶ 134 at 3. Based on our review of the record, we find the agency's posting of the RFQ on e-Buy, and subsequent issuance of the order to B&M, unobjectionable for the reasons set forth below.

As stated above, the VA issued the RFQ on June 20, 2018, pursuant to FAR § 8.405-2, which governs the ordering procedures for FSS orders requiring a statement of work. In relevant part, for FSS orders exceeding the simplified acquisition threshold, section 8.405-2 provides as follows:

- (iii) The ordering activity contracting officer shall-
 - (A) Post the RFQ on e-Buy to afford all schedule contractors offering the required services under the appropriate multiple-award schedule(s) an opportunity to submit a quote; or
 - (B) Provide the RFQ to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotes will be received from at least three contractors that can fulfill the requirements.

FAR § 8.405–2(c)(3)(iii)(A)-(B). Additionally, FAR § 8.402(d)(1)(i) provides that posting an RFQ on e-Buy is one medium for providing fair notice to all schedule contractors offering such supplies and services, as required by FAR § 8.405-2.

CC&C Management contends that the agency failed to meet the requirements of FAR § 8.405-2(c)(3)(iii)(A). First, the protester asserts that the agency did not post the RFQ to e-Buy under Schedule 71 II K. Protest at 6-7. The protester also alleges, in the alternative, that even if the agency posted the RFQ to e-Buy, the posting violated FAR § 8.405-2(c)(3)(iii)(A) because CC&C Management is a Schedule 71 II K holder, and it was unable to view the RFQ in the e-Buy system during the time period in question. Id. at 7-8. In this regard, the protester states that the agency "never posted the procurement on [e-Buy] as generally available to all holders of Schedule 71 II K." Id. at 7. In support of its arguments, the protester provided a declaration from one of its employees stating that "[d]uring the relevant time period in June-July 2018, CC&C had two managers monitoring the [e-Buy] portal for [Schedule 71 II K] daily, and the [RFQ] did not appear under that Schedule." Protest, Attach. C, Decl. of National Project Director and Strategic Adviser (Apr. 25, 2019).

In response to the protest, the contracting officer affirms he posted the RFQ on e-Buy under Schedule 71 II K on June 20. COS at 2. In addition, the contracting officer provided additional details of the steps he took to post the RFQ. Contracting Officer's

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Supp. Statement at 1-10. Specifically, the contracting officer stated that, through the e-Buy system, he posted the RFQ as a SDVOSB set-aside under Schedule 71 II K, SIN 712 3, and that he sent a notification of the posting to all SDVOSBs that held Schedule 71 II K at that time.⁵ Id. at 1, 5-9.

Additionally, the agency has provided two different e-Buy webpage screenshots showing that the RFQ was posted on e-Buy, one of which specifically shows that the RFQ was issued under Schedule 71 II K. AR, Tab 19, GSA Screenshot of RFQ Summary; AR, Tab 20, GSA Screenshot of RFQ Posting, at 1-2. Also, the record contains an e-mail from GSA to the agency confirming that the RFQ was indeed posted under Schedule 71 II K. AR, Tab 14, E-mail from GSA to Agency, April 17, 2019 (4:00 p.m.). Moreover, the fact that B&M, a Schedule 71 II K holder, was able to submit a quotation in response to the RFQ via e-Buy is also evidence that the RFQ was posted on e-Buy. Notwithstanding the protester's contention that after its Schedule 71 II K contract became effective on July 1, two of its employees monitored e-Buy for the RFQ posting and never saw it, we find that on June 20, the agency posted the RFQ on e-Buy under Schedule 71 II K.

We further find that the agency complied with FAR § 8.405-2(c)(3)(iii)(A) in posting the RFQ under Schedule 71 II K on e-Buy. This section of the FAR requires the agency to "[p]ost the RFQ on e-Buy to afford all schedule contractors offering the required services under the appropriate multiple-award schedule(s) an opportunity to submit a quote." FAR § 8.405-2(c)(3)(iii)(A). Here, the record establishes that the agency posted the RFQ on e-Buy under Schedule 71 II K. According to the screenshots of the e-Buy website provided by the contracting officer, this allows all SDVOSB vendors holding that schedule to view the RFQ and submit quotations. Contracting Officer's Supp. Statement at 7 (GSA e-Buy screenshot stating: "e[-]Buy allows any vendor under this category to view and quote on your RFQ even if they have not been selected to receive an e-mail invitation. The only exception to this is in the event that your RFQ is marked as a set-aside, and then only eligible vendors under that set-aside will be able to view and submit a quote."). Thus, because the agency posted the RFQ on e-Buy under the

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⁵ After receiving the agency report, the protester continued to argue in its comments that the RFQ could not have been posted on e-Buy since it held Schedule 71 II K, and never saw the RFQ posting on e-Buy. Comments at 6. In an attempt to resolve the factual dispute, our Office requested additional information from the protester regarding the precise date that CC&C Management's contract under Schedule 71 II K became effective. In response, the protester notified our Office that its contract under this schedule became effective on July 1, 2018--<u>i.e.</u>, 11 days after the agency issued the RFQ and selected SDVOSB vendors to receive notification of the RFQ. Protester Response to GAO Request for Additional Information (Aug. 16, 2019), at 1.

⁶ Indeed, the GSA e-Buy screenshot provided by the agency is consistent with information available on the GSA's e-Buy website. <u>See</u> GSA Buyer Guidance, https://www.gsaadvantage.gov/images/products/elib/pdf_files/bguide.pdf (last visited (continued...)

schedule in question, we find the agency publicized the RFQ in accordance with FAR § 8.405-2(c)(3)(iii)(A). See Encompass Group, LLC, B-411428, July 8, 2015, 2015 CPD ¶ 215 at 5.

The protester's assertion that it was unable to view the RFQ via e-Buy under Schedule 71 II K does not change our conclusion regarding the propriety of the agency's actions. The protester has not identified any authority for its contention that the agency was required under FAR § 8.405-2(c)(3)(iii)(A) to ensure that it was able to view the RFQ. Rather, FAR § 8.405-2(c)(3)(iii)(A) requires the agency to "post" the RFQ on e-Buy, not to "provide" the RFQ to any specific vendors. See FAR § 8.402(d)(1)(i) (posting an RFQ on e-Buy is one medium for providing fair notice to all schedule contractors offering such supplies and services, as required by FAR § 8.405-2). Therefore, we find the agency satisfied FAR § 8.405-2(c)(3)(iii)(A) when it posted the RFQ on e-Buy on June 20, allowing SDVOSB vendors holding Schedule 71 II K to submit quotations. Consequently, since there is no dispute that B&M validly held this schedule during the relevant time period, we deny this protest ground.

(...continued)

Aug. 20, 2019) ("All vendors listed under the category selected can view and quote on the RFQ even if they have not been selected to receive a personal email invite.").

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⁷ The record does not explain why the protester's employees were not able to view the RFQ posting under Schedule 71 II K after its contract became effective on July 1 and before the RFQ closed on July 9. Since we find the agency's June 20 posting on e-Buy to have met the requirements of FAR § 8.405-2(c)(3)(iii)(A), we need not resolve this factual matter.

⁸ In support of its contention, the protester argues that the record shows that the agency selectively sent the RFQ to seven holders of GSA FSS schedule 71 II K, SIN 712 3, only one of which (<u>i.e.</u>, B&M) was a SDVOSB. Protest at 8. However, because FAR § 8.405-2(c)(3)(iii)(A) only requires the agency to post the RFQ on e-Buy and does not require the agency to send a notification to a particular number of vendors through the e-Buy system, this argument provides no basis to sustain the protest.

⁹ In its protest, CC&C Management also argues that the agency's issuance of the RFQ did not comply with FAR § 8.405-2(c)(3)(iii)(B), contending that the agency failed to provide the RFQ in a manner to reasonably ensure that it would receive quotes from three SDVOSBs. Protest at 6-8. However, because we find that the agency complied with FAR § 8.405-2(c)(3)(iii)(A), and the agency was only required to meet the publication requirements in either subsection (A) or (B), we need not address whether the agency's issuance of the RFQ was in accordance with subsection (B).

Agency's Evaluation of B&M's Quotation

CC&C Management also challenges the agency's determination that B&M's quotation was technically acceptable. Protest at 8-9. In this regard, the protester argues that B&M's quotation failed to satisfy the RFQ's requirement that the contractor provide a 100,000 square foot storage facility. Id. at 8 citing RFQ at 16.

In support of its protest, CC&C Management contends that publically available information indicates that B&M's proposed facility is occupied by multiple tenants, and therefore B&M's facility cannot provide a facility with 100,000 square feet of available space. Protest at 8-9. Further, noting the RFQ's requirement that the agency perform a site visit, CC&C Management argues that the agency's site visit could not have been conducted in a reasonable manner if it did not reveal that part of the facility was being leased to another firm. <u>Id.</u> at 9.

In response, the agency contends that its evaluation of B&M's quotation was reasonable and consistent with the RFQ. MOL at 3-5. In this regard, the agency states it conducted a site visit of B&M's facility, documented the facility's compliance with the solicitation's requirements, and did not observe any indication that space in the facility was occupied by other tenants. Memorandum of Law (MOL) at 4; COS at 3. The agency also argues that B&M's actual compliance with the requirement to provide a 100,000 square foot storage facility during contract performance is a matter of contract administration that our Office does not review as part of our bid protest jurisdiction. MOL at 5.

Here, CC&C Management acknowledges that B&M's proposed storage facility is at least 100,000 square feet, as required by the RFQ. Comments at 10; RFQ at 16. The protester, however, nevertheless argues that B&M's quotation is technically unacceptable because publically available information indicates that less than 100,000 square feet of B&M's proposed storage facility is currently available. <u>Id.</u>

We dismiss this protest ground. 4 C.F.R. § 21.5(a). In this regard, whether B&M is able to provide the storage facility required by the RFQ during contract performance involves a matter of contract administration, which our Office does not consider as part of our bid protest function. See SSI Tech., Inc., B-417299, Apr. 4, 2019, 2019 CPD ¶ 136 at 3.

The protest is denied.

Thomas H. Armstrong General Counsel

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