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Decision

Matter of: Precise Management, LLC

File: B-418359

Date: February 27, 2020

Joseph A. Camardo, Jr., Esq., and Justin T. Huffman, Esq., Camardo Law Firm, P.C., for the protester.

Alan Grayson, Esq., for CDS Services, Inc., the intervenor.

Tyler W. Brown, Esq., Department of Veterans Affairs, for the agency.

Kasia Dourney, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that a contracting agency improperly withheld vital information from the Small Business Administration (SBA), bearing on the protester's responsibility, when it referred the protester to the SBA for consideration under certificate of competency procedures is dismissed where there is no evidence that the procuring agency provided incorrect information, or withheld information from the SBA.

2. Protest challenging the agency's evaluation of vendors' quotations and the award decision is dismissed where the protester is not an interested party to challenge the award.

DECISION

Precise Management, LLC, (PM), a service-disabled veteran-owned small business (SDVOSB) of Hope Hull, Alabama, protests the award of a contract to CDS Services, Inc., under request for quotations (RFQ) No. 36C25619Q0881, issued by the Department of Veterans Affairs (VA) for pest management services. The protester asserts that the VA improperly excluded its quotation from further consideration after it found the protester nonresponsible, and subsequently withheld pertinent information about the protester when it referred the matter of PM's responsibility to the Small Business Administration (SBA) for review under the SBA's certificate of competency (COC) process. PM also challenges the award decision, and contends that CDS did not possess the required licenses to perform pest control work in Mississippi.

We dismiss the protest.

BACKGROUND

The agency issued the solicitation on May 23, 2019, seeking pest management services at the VA Medical Center in Jackson, Mississippi. Agency's Request for Dismissal, exh. 1, RFQ, at 2. The procurement was set aside for SDVOSBs, and conducted utilizing the simplified acquisition procedures of Federal Acquisition Regulation (FAR) subpart 13.5. Id. at 41. Award was to be made on a lowest-priced, technically acceptable basis, using three technical capability subfactors: relevant experience, contractor personnel/staff qualifications, and past performance. Id. at 42.

Four vendors submitted quotations by the June 26 closing date, including PM and CDS. The VA evaluated PM's quotation and found that it was technically acceptable and offered the lowest price. Agency's Request for Dismissal, exh. 2, Contracting Officer's Statement (COS) at 2. As part of the responsibility determination, the contracting officer "review[ed] . . . the Dun & Bradstreet Supplier Analysis Report for Precise Management, LLC[, noting] that this contractor was a high, severe risk in multiple categories throughout the report with the highest (and worst) scores possible (9) in these categories." Id. Accordingly, on August 22, the contracting officer concluded that PM did not have the financial capability to adequately perform the contract and was therefore nonresponsible.¹ Id. As a result, the contracting officer excluded PM from further consideration.

Subsequently, because the procurement was set aside for small businesses, the contracting officer referred his nonresponsibility determination to the SBA for review under the SBA's COC procedures.² COS at 2. On September 19, the SBA concurred with the contracting officer's determination and denied PM a COC, based on its "overall analysis of the financial resources available, including the inconsistency of and lack of complete financials as well as the lack of financial capacity to perform and existing Tax Liens." Agency's Request for Dismissal, exh. 3, SBA Communications, at 1-2, 3.

¹ In its protest, PM alleges that the contracting officer's determination in this regard was based, in part, "upon [PM's] financial capability and in part [on] a bad performance rating that PM received" for a contract it currently performs for the VA in Louisiana. Protest at 4. We find no evidence in the record that the nonresponsibility determination was based on PM's problematic past performance record; specifically, as discussed below, the SBA's denial of the COC was based on PM's lack of financial capacity and existing tax liens. Agency's Request for Dismissal, exh. 3, SBA Communications, at 1-2, 3.

² Where a small business is determined to be nonresponsible, the matter must be referred to the SBA, which has the conclusive authority to determine a small business firm's responsibility by issuing or refusing to issue a COC. 15 U.S.C. § 637(b)(7); FAR § 19.602-1(a); see, e.g., Orion Tech., Inc., B-405970, Jan. 13, 2012, 2012 CPD ¶ 89 at 4.

On September 24, having been notified by the SBA of its decision not to issue PM a COC, the VA awarded the contract to CDS Services, Inc., the next eligible vendor. COS at 3. On October 2, PM filed an agency-level protest, which the agency denied on December 3, finding that the protester was not an interested party. COS at 3; Protest at 5. This protest followed.

DISCUSSION

The protester challenges the agency's evaluation of its quotation, including its nonresponsibility determination, the exclusion of its quotation from further consideration, and the award decision. Protest at 5-6. PM also alleges that the VA improperly withheld pertinent information, bearing on the protester's responsibility, from the SBA when it referred the company for a COC determination. Id. at 5. Finally, PM claims that the awardee did not possess the licenses to perform pest control work in Mississippi, as required by the solicitation and the appropriate state statute. Id. at 6-7.

The agency and the intervenor request that our Office summarily dismiss PM's protest because the denial of a COC by the SBA is not a matter to be considered by our Office, absent narrowly defined exceptions, not demonstrated by the protester in this case. Agency's Request for Dismissal at 2-3; Intervenor's Request for Dismissal at 2. Additionally, the agency and the intervenor contend that the protester is not an interested party to challenge the agency's evaluation of vendors' quotations and the award decision. Agency's Request for Dismissal at 2; Intervenor's Request for Dismissal at 3 n.1. On this record, we agree.

Turning first to the COC referral issue, under the SBA's COC program, agencies must refer to the SBA a determination that a small business is not responsible if that determination would preclude the small business from receiving an award. 15 U.S.C. § 637(b)(7); 13 C.F.R. § 125.5; FAR subpart 19.6. Under section 637(b)(7) of the Small Business Act, the SBA, not our Office, has the conclusive authority to review a contracting officer's determination that a small business concern is not responsible. Consequently, our Office does not review COC referrals to the SBA, or the issuance of, or refusal to issue, a COC absent limited exceptions that we interpret narrowly out of deference to the role of the SBA in this area. 4 C.F.R. § 21.5(b)(2). These exceptions are for protests that show possible bad faith on the part of government officials, or that present allegations that the SBA failed to follow its own published regulations or failed to consider vital information bearing on the firm's responsibility due to the manner in which the information was presented to or withheld from the SBA by the procuring agency. Id.; see MPC Containment Sys., LLC, B-416188.2, July 23, 2018, 2018 CPD ¶ 251 at 4; Vetsummit, LLC, B-405187, Aug. 29, 2011, 2011 CPD ¶ 172 at 3-4.

Here, PM fails to allege the facts necessary to invoke the jurisdiction of our Office to review the referral to or a COC determination made by the SBA. Specifically, PM alleges that the VA failed to inform the SBA of its intention to exercise a third option year on a separate, ongoing contract that PM was performing for the VA in Louisiana. PM claims that this other contract "was similar in scope and almost twice the value" of

the current requirement. Protest at 5. Hence, PM contends that this was “vital information” bearing on its responsibility because it “overwhelmingly proves that PM is a responsible [c]ontractor.” Id. at 7. We find no merit to PM's assertion.

We note that responsibility determinations are largely committed to the contracting officers' discretion, and conducted on a case-by-case basis. Here, the record reveals that the contracting personnel conducting the responsibility determination on the current requirement were based in Biloxi, Mississippi, while the contracting office making the decision about exercising the third option on the ongoing contract was located in New Orleans, Louisiana. COS at 4. As the agency explains, these two offices did not have any “interactions, management or oversight” with respect to each other; moreover, the VA points out that a decision to exercise an option on a different contract, at a different location and executed by a different contracting officer³ is “entirely unrelated” and has “no bearing upon” the contracting officer's nonresponsibility determination at issue here. Id.; Agency's Request for Dismissal at 3.

We concur with the VA in this regard. We view the two procurements as unrelated, and also note that there is no evidence in the record that the contracting officer on the current requirement knew of the other contracting team's decision to exercise the third option on the Louisiana contract. Since the record does not show that the current contracting officer had this information available when he conducted the responsibility determination on the current requirement, he could not have provided it to, or withheld it from, the SBA when he referred the matter under the COC procedures.⁴

³ PM alleges that the “original [contracting officer]” on the Louisiana contract that was awarded more than 3 years prior to the current (Mississippi) requirement was the point of contact for the current procurement. Agency-Level Protest at 4. While PM implies that the contracting officer who issued the nonresponsibility determination on the current requirement was the same contracting officer who exercised the third option on the Louisiana contract, Protest at 5-6, this assertion is contradicted by the record. See COS at 4, 7-8.

⁴ With regard to what information contracting officers are required to consider when conducting responsibility determinations, our Bid Protest Regulations providing for our limited review of affirmative responsibility determinations include some guidance. Under 4 C.F.R. § 21.5(c), our Office's review is limited to an inquiry whether the contracting officer unreasonably failed to consider available relevant information in making the responsibility determination. See, e.g., 67 Fed. Reg. 79,833, 79,834 (Dec. 31, 2002) (GAO's review involves “a contracting officer's failure to consider ‘available relevant information,’ rather than the reasonableness of the contracting officer's judgments based on that information, or his or her failure to obtain information through an exhaustive investigation.”). On this record, we have no basis to conclude that the contracting officer on the current requirement unreasonably failed to consider available relevant information bearing on PM's responsibility.

We conclude that PM failed to show that the manner in which the VA presented information to the SBA was improper, or that the SBA's decision declining to issue the COC to PM resulted from the VA's failure to inform the SBA of its decision to exercise the third option on the contract performed by the protester.

The agency also states that PM submitted additional information to the SBA on its own behalf with its COC application, an assertion that is supported by the record. Agency's Request for Dismissal at 2-4; Agency's Request for Dismissal, exh. 3, SBA Communications, at 4. If PM believes that the information about the VA's decision to exercise an option on an ongoing contract would have affected the SBA's view of PM's financial capacity, the protester had the opportunity to submit that information. PM's arguments are inadequate to invoke our Office's limited jurisdiction to review a denial of a COC. Lawson Envtl. Servs. LLC, B-416892, B-416892.2, Jan. 8, 2019, 2019 CPD ¶ 17 at 4-5 (finding the protest failed to establish any of the exceptions that would allow our Office to review the contracting agency's actions). In sum, the protester has not established the elements necessary for our Office to consider a protest of SBA's decision not to issue a COC. We thus have no basis to review the finding of nonresponsibility. MPC Containment Sys., LLC, *supra*.

With regard to PM's other allegations, challenging the agency's evaluation and award decision, in order for a protest to be considered by our Office, a protester must be an interested party, that is, the protester must have a direct economic interest in the resolution of a protest issue. 4 C.F.R. § 21.0(a); Cattlemen's Meat Co., B-296616, Aug. 30, 2005, 2005 CPD ¶ 167 at 2 n.1. A protester is an interested party to challenge the evaluation of the awardee's quotation where there is a reasonable possibility that the protester's quotation would be in line for award if the protest were sustained. Alutiig Global Sols., B-299088, B-299088.2, Feb. 6, 2007, 2007 CPD ¶ 34 at 9. Because the protester was found nonresponsible, it is not eligible for award and therefore lacks the requisite interest to maintain its other grounds of protest.

The protest is dismissed.

Thomas H. Armstrong
General Counsel