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Decision

Matter of: The Severson Group, LLC

File: B-418673.5

Date: December 4, 2020

Matthew E. Feinberg, Esq., Lauren R. Brier, Esq., and Matthew E. Kreiser, Esq., Piliro Mazza PLLC, for the protester.

Daniel F. Edwards, Esq., and Tara D. Hopkins, Esq, Frost Brown Todd, LLC, for the intervenor.

Melissa Martin, Esq., Department of the Navy, 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

Protest that awardee engaged in an impermissible “bait and switch” of a key employee is denied where the protester has not demonstrated that the proposed key employee was not available or that the awardee intended to replace the proposed key employee with a less qualified person.

DECISION

The Severson Group, LLC (Severson), of San Marcos, California, an 8(a) small business concern, protests the award of a contract by the Department of the Navy, Naval Supply Systems Command, to the State of Hawaii, Department of Human Services, Division of Vocational Rehabilitation, Ho’opono-Services for the Blind (Ho’opono), under request for quotations (RFQ) No. N0060420Q4005, for mess attendant services for the Silver Dolphin Bistro, Joint Base Pearl Harbor. The protester contends that the awardee proposed a key person that it knew would not be available to perform, that is, the awardee engaged in a “bait and switch.”¹

¹ The contract under this solicitation was initially awarded to Ho’opono. Severson protested the award and the agency took corrective action which rendered the protest academic. As a result, we dismissed the protest. *The Severson Group, LLC*, B-418673, May 21, 2020 (unpublished decision). Severson then protested the agency’s proposed corrective action. We denied that protest. *The Severson Group, LLC*,

We deny the protest.

BACKGROUND

The RFQ, issued on November 27, 2019, solicited proposals from State licensing agencies (SLA) under the Randolph-Sheppard Act (20 U.S.C. §§ 107(a)-(f)), and 8(a) small business concerns. Agency Report (AR), Tab 1, RFQ, amend. 3 at 1. The Randolph-Sheppard Act (RSA) has the stated purpose of “providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting.” 20 U.S.C. § 107(a). The RSA directs the Secretary of Education to designate SLAs, which are responsible for training and licensing blind persons. *Id.* § 107a(a)(5). The RSA also establishes a priority for blind persons, represented by SLAs under the terms of the RSA, in the award of contracts for, among other things, the operation of vending facilities, including cafeterias, on federal property. *Id.* §§ 107(b), 107e(7). Accordingly, the implementing regulations of the Department of Education provide that federal agencies requiring cafeteria services must invite SLAs to respond to a solicitation for such services. 34 C.F.R. § 395.33(b). If a designated SLA submits an offer found to be within the competitive range for the acquisition, the agency will enter into negotiations solely with the SLA, in an effort to obtain the services at a reasonable cost. *Id.* § 395.33(a), (b).

Here, in accordance with the requirements of the RSA, the solicitation provided that:

A single award will be made on the basis of the lowest evaluated price of quotes (with the exception of where priority is given to the SLA) meeting the acceptability standards for non-cost factors. The Government intends to award on initial quotes but reserves the right to conduct discussions.

Competition is limited to 8(a) small businesses and the State Licensing [Agency] (SLA) under the Randolph Sheppard Act (RSA), with the intent to follow competitive procedures permitted under the RSA; pursuant to 20 USC 107 and 34 CFR 395.33, a RSA State Licensing Agency (SLA) that submits an offer will be granted a priority in the source selection. If an SLA submits an offer that is in the competitive range, the Contracting Officer may initiate discussions solely with the SLA for the purpose of facilitating an award to the SLA without further consideration of the other quoters. The SLA may be included in the competitive range even if it is not the lowest priced.

RFQ amend. 3 at 8.

B-418673.2 *et al.*, Aug. 17, 2020, 2020 CPD ¶ 275. This protest concerns the conduct of the procurement following the agency’s corrective action.

Quotations were to be evaluated under the following factors: technical capability, past performance, and price. The technical capability and past performance factors were evaluated as acceptable or unacceptable. *Id.* Following the evaluation, the quotation of Ho'opono was found acceptable and included in the competitive range. AR, Tab 3, Fair and Reasonable Determination at 3. The agency determined that Ho'opono's proposed price was fair and reasonable and awarded the contract to Ho'opono. *Id.* This protest followed.

DISCUSSION

As relevant to this protest, under the technical capability factor vendors were required to provide resumes for key personnel. RFQ at 5. In addition, vendors were required to provide a letter of intent for any proposed key personnel that were not currently employed by the vendor (prime or subcontractor). *Id.* Ho'opono's teaming partner was Blackstone Consulting, Inc. For its project manager, Ho'opono submitted the resume of Employee M, a current employee of Blackstone. AR, Tab 6, Ho'opono Quotation, Employee M Resume. For this position, Severson, the incumbent contractor, submitted the resume of Employee G, the current project manager. AR, Tab 10, Severson Quotation, Employee G Resume.

According to Severson, after the contract was awarded to Ho'opono, Blackstone contacted Employee G to offer him the project manager position. Protest at 13; Comments, Exh. D, Decl. from Employee G (stating that the Vice President of Operations at Blackstone Consulting "asked me if I wanted to continue my [role] as [project] manager at Silver Dolphin Bistro when the new vendor takes over the contract."). Severson asserts that this demonstrates that Ho'opono negligently or intentionally misrepresented that Employee M would fill the project manager position at the Silver Dolphin. *Id.* at 13-15; Comments at 4, 7.

Severson also notes that Employee M is the current project manager on a Marine Corps food services contract that is being performed by Ho'opono and Blackstone. Comments at 4. Severson asserts that it is unlikely that Employee M would leave that position on a larger and more lucrative contract, with a performance period through at least April 2022, to become the project manager for the Silver Dolphin. *Id.* at 4-5, 6. Severson concludes that Ho'opono therefore knew that Employee M would be unavailable to perform at the Silver Dolphin, and included her resume solely to comply with the solicitation requirement to provide a resume for key personnel. *Id.* at 7. Severson also notes that in an affidavit Employee M submitted in response to the protest to explain her interaction with Employee G, she did not specifically state that she intended to serve as the project manager for the Silver Dolphin contract. *Id.* at 6.

The agency argues that it evaluated the resume of Employee M, which Ho'opono included in its proposal for the position of project manager, and concluded the individual met the government's requirements. Memorandum of Law at 6. The agency states that it also evaluated the resume of Employee G, which Severson included in its proposal for the position of project manager, and concluded this individual met the government's

requirements as well. *Id.* The agency argues that the protester has failed to show that Ho’opono intended to switch its proposed project manager, Employee M, upon contract award, and even if Ho’opono did replace Employee M with Employee G, since both resumes were acceptable, there is no evidence of baiting. *Id.*

To establish an impermissible bait and switch, a protester must show that a firm either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance, and that the misrepresentation was relied on by the agency and had a material effect on the evaluation results. *Data Mgmt. Servs. Joint Venture*, B-299702, B-299702.2, July 24, 2007, 2007 CPD ¶ 139 at 10. Even where there is evidence of a planned switch in key personnel, our Office will not find an impermissible bait and switch where there is no evidence of baiting, *i.e.*, an intent to replace proposed key personnel with less qualified personnel. *Id.*, *Dynamic Security Concepts, Inc.*, B-416013, B-416013.2, May 15, 2018, 2018 CPD ¶ 186 at 6.

Severson has not demonstrated that Ho’opono engaged in an impermissible “bait and switch.” First, Severson has not demonstrated that Ho’opono misrepresented that Employee M was available and would perform as the project manager on the Navy contract. While Severson argues that it is unlikely that Employee M would leave her job on a larger and more lucrative contract to become the project manager at the Silver Dolphin, Severson is engaging in speculation. Severson also notes that in her affidavit in response to the protest, Employee M did not state that she intended to serve as the project manager. According to Severson, this indicates that Employee M was not the intended project manager. Employee M did say in her affidavit, however, that she is the designated project manager for the facility, and that after Ho’opono was awarded the contract she went to the facility to prepare for the takeover of the service. Intervenor Comments, Exh. 1, Decl. of Employee M at 1. In our view, this indicates that Employee M was the intended project manager and started to take responsibility for the position.²

In addition, a Vice President of Blackstone submitted an affidavit in which he stated that when Ho’opono’s proposal was prepared, Blackstone intended for Employee M to serve as the project manager and that remains its intention. Intervenor Comments, Exh 2, Decl. of Blackstone Vice President at 1. The Blackstone Vice President further stated that Blackstone has not offered the project manager position to anyone else. *Id.* at 2. Given these factors, Severson has failed to demonstrate that Ho’opono misrepresented the availability of Employee M for the project manager position at the Silver Dolphin, or its intention to have Employee M perform in that role.

Second, Severson has not provided any evidence of baiting, that is, that Ho’opono intended to replace Employee M with a less qualified project manager. As noted above,

² Employee M. also explained that as opposed to Blackstone approaching Employee G, Employee G actually asked Employee M whether there would be an opportunity for Employee G to stay on at the site. Intervenor Comments, Exh. 1, Decl. of Employee M at 1. *Id.* Further, the Vice President of Blackstone also stated that no position has been offered to Employee G. *Id.*, Exh 2, Decl. of Blackstone Vice President at 1.

under the technical capability factor both Ho'opono and Severson were rated acceptable. Severson proposed Employee G for its project manager. According to Severson, Ho'opono intended to hire Employee G to replace Employee M. Severson does not assert that Employee G, whom Severson proposed as its project manager and is the incumbent project manager, is less qualified than Employee M.

The protest is denied.

Thomas H. Armstrong
General Counsel