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Decision

Matter of: Foxhole Technology, LLC

File: B-420718

Date: July 29, 2022

Brian Bunting, Esq., J. Ryan Frazee, Esq., and Jennifer Eve Retener, Esq., Wiley Rein LLP, for the protester.

William T. Welch, Esq., J. Patrick McMahon, Esq., and Lewis Rhodes, Esq., McMahon, Welch and Learned, PLLC, for AmVet Technologies, LLC, the intervenor.

Kevin R. Hilferty, Esq., Stephanie B. Young, Esq., Marianna Lvovsky, Esq., and Stephanie J. Villalta, Esq., , Department of Energy, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is dismissed where record shows that the protester is not an interested party to maintain its protest.

DECISION

Foxhole Technology, LLC, of Herndon, Virginia, protests the establishment of a blanket purchase agreement (BPA) and the issuance of two task orders to AmVet Technologies, LLC, of Las Vegas, Nevada, under request for quotations (RFQ) No. 89303021RIM000005, issued by the Department of Energy for cybersecurity assessment and authorization support services. Foxhole argues that the agency should have eliminated the AmVet quotation from consideration because the firm did not have the corporate experience required under the terms of the RFQ.

We dismiss the protest.

BACKGROUND

Competition for this requirement was confined to federal supply schedule (FSS) vendors holding appropriate FSS schedules, and the RFQ contemplates the establishment of a master BPA, along with the issuance of two initial task orders for the solicited services, for a base year and four 1-year options. The RFQ advised that the successful firm would be determined using best-value tradeoff source selection procedures. The initial

task orders are to be performed on a fixed-price basis, although the RFQ contemplates the possibility of additional task orders to be issued on either a fixed-price basis, a time-and-materials basis, or labor-hours basis. RFQ at 3.¹

Firms were advised that the agency would evaluate quotations considering price and several non-price factors. The non-price factors, in descending order of importance, were technical approach, corporate experience, and management approach.² RFQ at 53. The non-price factors collectively were significantly more important than price. *Id.*

In response to the RFQ, the agency received a number of quotations, including those submitted by Foxhole and AmVet. The agency evaluated the quotations, engaged in discussions and solicited, obtained and evaluated revised quotations. After completing its evaluation of revised quotations, the agency assigned the following ratings to the quotations of Foxhole and AmVet:

| | Foxhole | AmVet |
|-----------------------------|----------------|--------------|
| Technical Approach | Acceptable | Outstanding |
| Corporate Experience | Good | Good |
| Management Approach | Acceptable | Outstanding |
| Price | \$50,802,303 | \$46,327,561 |

Agency Report (AR), Exh. B.2, Source Selection Decision Document (SSDD), at 32. On the basis of these evaluation results, the agency made award to AmVet, concluding that its quotation represented the best value to the government. After being advised of the agency's source selection and receiving a brief explanation of the agency's decision, Foxhole filed the instant protest.

DISCUSSION

Foxhole argues that the agency improperly accepted the AmVet quotation because, according to Foxhole, AmVet did not have the corporate experience required under the terms of the RFQ. Foxhole maintains that the solicitation required the successful firm to have at least one corporate experience example where the firm performed as a prime contractor or team lead in a contractor teaming agreement. Foxhole argues that none

¹ All references to the RFQ are to the conformed version of the solicitation provided by the agency in its report. That version of the RFQ includes page numbers that were inserted by the agency (as opposed to the original page numbers included on the document), and all citations are to the agency's inserted page numbers.

² The RFQ stated that the agency would assign adjectival ratings for the non-price factors of outstanding, good, acceptable, marginal or unacceptable. RFQ at 54-55.

of AmVet's corporate experience examples meet this requirement, and that the firm's quotation should have been eliminated from consideration.³

We dismiss Foxhole's protest because we conclude that the firm is not an interested party to maintain its protest. Our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a)(1), 21.1(a), provide that only an "interested party," that is, an actual offeror or quoter whose direct economic interest would be affected by the award of a contract or the failure to award a contract, may file a protest. Where a firm would not be in line for the award of a contract (or in this instance, the establishment of a BPA and issuance of task orders) even if its protest were sustained, the firm is not an interested party within the meaning of our Bid Protest Regulations. *Mesotech International, Inc.*, B-419534, Mar. 22, 2021, 2021 CPD ¶ 131 at 3.

As noted, Foxhole's protest is confined to a challenge of the establishment of the BPA and issuance of the task orders to AmVet. The record shows, however, that even if AmVet's quotation were eliminated from consideration, there are several other concerns whose quotations were found to be both technically superior and lower in price compared to Foxhole's quotation. Specifically, the record shows that there are at least four firms that submitted quotations that were technically superior and lower in price compared to the Foxhole quotation.⁴ AR, Exh. B.2, SSDD, at 32. Foxhole has not challenged the agency's evaluation of these quotations, or of its own quotation.

It is therefore evident from the record that one of the intervening firms, rather than Foxhole, would be in line for award, even if we agreed with Foxhole that the AmVet quotation should have been rejected. Under the circumstances, we conclude that Foxhole lacks the direct economic interest necessary to maintain its protest.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

³ In its initial protest, Foxhole also argued that the agency misevaluated its quotation under the technical approach and management approach evaluation factors. The agency provided detailed responses to these allegations in its report. In its comments responding to the agency report, Foxhole made no mention of these allegations. We therefore conclude that Foxhole abandoned these protest issues. *Yang Enterprises, Inc.*, B-415923, Mar. 12, 2018, 2018 CPD ¶ 109.

⁴ A fifth firm submitted a quotation that was rated superior to the Foxhole quotation under the technical approach factor, but inferior to the Foxhole quotation under the corporate experience factor, and equivalent to the Foxhole quotation under the management factor; that firm also offered a price that was lower than Foxhole's. AR, Exh. B.2, SSDD, at 32.