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Decision

Matter of: Océ Government Services, Inc.

File: B-409922

Date: September 18, 2014

Andrew J. Mohr, Esq., John J. O'Brien, Esq., Catherine K. Kroll, Esq., Gabriel E. Kennon, Esq., and Amy J. Spencer, Esq., Cohen Mohr LLP, for the protester. Tundo N. Pham, Esq., Department of State; and Nathan C. Guerrero, Esq., General Services Administration, for the agencies. Nora K. Adkins, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's rejection of the protester's proposal under a solicitation issued to vendors under a General Services Administration Federal Strategic Sourcing Initiative blanket purchase agreement (BPA) is denied where the agency reasonably concluded that the protester did not have a BPA, and that the protester did not demonstrate that its offer was submitted as a participating dealer in the name of an entity holding one of the BPAs.

DECISION

Océ Government Services, Inc., of Springfield, Virginia, protests the rejection of its proposal under request for proposals (RFP) No. SAQMMA-14-R-0244, which was issued by the Department of State (DOS) to vendors under a General Services Administration's (GSA) Federal Strategic Sourcing Initiative (FSSI) print management blanket purchase agreement (BPA) for the lease of multifunctional copier devices and services. The protester maintains that the agency unreasonably rejected its proposal because the agency mistakenly believed that Océ, which does not hold a BPA, could not submit a proposal and receive the award as a participating dealer under another vendor's GSA FSSI BPA.

We deny the protest.

BACKGROUND

DOS issued the solicitation on May 1, 2014, to GSA FSSI print management BPA holders under functional area II--device plus customizable solutions.¹ The solicitation sought proposals for color and monochrome multifunctional copier devices and services. The RFP contemplated the issuance of an indefinite-quantity task order for a 60-month lease term. RFP at 3. The solicitation, as amended, anticipated award on a best-value basis considering the following four factors: (1) technical capability of the items proposed; (2) service and management approach and capability; (3) past performance; and (4) price. RFP Amend. 1 at 3.

DOS provided the solicitation to nine GSA FSSI functional area II BPA holders, including Canon. Contracting Officer's Statement (June 13, 2014) at 1-2. The agency did not provide Océ with the solicitation because it did not have a BPA. Nonetheless, on June 2, Océ submitted a proposal in response to the solicitation. Id. at 2.

Océ's proposal referenced Canon's GSA Schedule contract No. GS-00F-0002V and Canon's GSA FSSI BPA No. GS-03F-PM009. Océ Technical Proposal at 3; Océ Price Proposal at 2. The proposal did not list Canon as the offeror. See Océ Technical and Price Proposals. Rather, the proposal was submitted on Océ letterhead and provided Océ's address, Océ's tax identification number, Océ's DUNS number, and Océ's cage code as the "offeror." Océ Technical Proposal at 2-3; Océ Price Proposal at 1. The proposal was also signed by an officer of Océ--who was listed as the point of contact for the offeror. Océ Technical Proposal at 3; Océ Price Proposal at 3.²

In the "company overview" portion of its proposal, Océ provided the following explanation concerning its relationships with Canon:

Océ Government Services, Inc. (OGS) was formed and incorporated as an independent subsidiary of Océ North America, Inc. OGS is now an independent subsidiary of Canon U.S.A., Inc. (Canon) as a result of the merger of Océ North America with Canon. OGS was formed to meet the growing need for Federal Agencies to obtain services from

¹ The GSA FSSI print management BPA is a multiple-award BPA established against multiple award schedule 36--office imaging and document solutions--in accordance with Federal Acquisition Regulation (FAR) subpart 8.405-3. The GSA FSSI BPA identifies nine contractors who were awarded BPAs under functional area II. Contracting Officer's Statement at 1.

² Océ's name, address, DUNS number, cage code, and point of contact were also provided under the contractor/offeror block of standard form 1449.

“Facility Cleared” contractors. Pursuant to a Special Security Agreement among OGS, Canon, and the Department of Defense in January 2012, OGS was issued a “Secret” Facility Security Clearance in March 2012 under the National Industrial Security Program (NISP). GSA and DSS have authorized OGS, as a subsidiary of Canon, to use Canon’s GSA FSSI BPA Schedule # GS-03F-PM009 (FSSI BPA) and to accept orders directly from ordering activities. OGS is authorized to sell, lease and service Canon brand products and is supported by Canon’s Technical Service and Support Division to ensure OGS receives the latest technical updates and support tools.

Océ Technical Proposal at 5. Océ’s proposal did not provide further details as to its relationship with Canon. See id.

The contracting officer’s review of Océ’s proposal noted that the proposal indicated that Océ was the named offeror in both the technical and price proposals. Contracting Officer’s Statement (June 13, 2014) at 2-3. The contracting officer then researched the contract and BPA numbers listed in Océ’s proposal, and verified through the federal procurement data system-next generation (FPDS-NG) database that Canon was the entity that held the contract and BPA; Océ was not named on either procurement in the FPDS-NG system. Id. at 3. The contracting officer also reviewed Canon’s and Océ’s listings in the system for award management (SAM) and found that both entities had separate DUNS numbers and cage codes. Contracting Officer’s Statement, Phone Conference with GAO (Aug. 18, 2014).³ Finally, the contracting officer reviewed the first page of Canon’s GSA contract and did not find any reference to Océ or its relationship with Canon. Id. Based upon this research, the contracting officer concluded that Océ was not a BPA holder.

The contracting officer also reviewed the information detailed in Océ’s proposal, including Océ’s explanation of its relationship with Canon. The contracting officer concluded that the offering entity was clearly Océ, rather than Canon, despite the references to Canon’s GSA schedule contract and Canon’s BPA. Id. at 4-5. The contracting officer also concluded that the proposal’s reference to Canon’s contract vehicles, and Océ’s asserted ability “to use” the schedule and BPA, did not constitute the submission of an offer on behalf of or in the name of Canon--the BPA holder. Id. at 5.

The contracting officer determined that Océ’s proposal did not demonstrate that it was eligible to submit an offer or receive an award in its own name, or on behalf of

³ On August 18, the GAO attorney assigned to this protest had a conference call with the parties to clarify portions of the record. Specifically, the GAO attorney and the protester’s attorney asked the contracting officer questions regarding what was considered and reviewed during his evaluation of Océ proposal.

Canon. Id. The contracting officer informed Océ of DOS's decision to reject Océ's proposal. Contracting Officer's Notice of Rejection (June 2, 2014) at 1. On June 11, Océ filed this protest.

DISCUSSION

Océ asserts that DOS's rejection of its proposal was contrary to GSA regulations, which Océ alleges permit agencies to accept proposals from and award contracts to GSA schedule contract vendors' "participating dealers." As discussed in detail below, participating dealers are entities which are authorized by the schedule-holder, and approved by GSA. GSA memo (June 24, 2014) at 2. In this regard, Océ argues that it was authorized by Canon and approved by GSA on October 12, 2012, as a participating dealer in accordance with the terms of Canon's underlying GSA schedule contract No. GS-00F-0002V, and is thus "fully, completely and duly authorized to accept task orders and invoice customers on its own under the Canon's GSA Schedule." Protest at 4. Océ also contends that it is likewise authorized to submit a proposal and accept a task order under Canon's GSA FSSI BPA No. GS-03F-PM009. For the reasons discussed below, we conclude that the contracting officer reasonably found that Océ was not eligible to receive an award in its own name because it was not a BPA holder, and because Océ did not adequately identify itself as a participating dealer that was authorized to submit the proposal on behalf of Canon, a BPA holder.

In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. We have long held that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency's evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. An offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6.

The record here clearly shows, and the protester does not dispute, that Océ is not a schedule contract holder or a BPA holder. See Protest at 9-10; Océ Technical Proposal at 5. Rather, Océ is an authorized participating dealer under Canon's GSA schedule contract. Id. It is further undisputed that Océ submitted a proposal in response to the solicitation that identified Océ Government Services as the offeror. Océ Technical Proposal at 3; Océ Price Proposal at 2. The dispute here concerns the agency's determination that Océ could not submit a proposal or receive a task order award under GSA's FSSI functional area II BPA in its own

name because its proposal did not clearly explain that it was submitted on behalf of or in the name of Canon.

In order to develop the record, our Office sought the views of GSA as to whether its regulations permit a participating dealer, such as Océ, to submit a proposal and accept an award in its own name. GSA provided our Office with a memorandum that explained that Acquisition Regulation (GSAR) clauses 552.216-73 and 552.232-82 permit a GSA schedule contract holder to “choose to authorize a separate entity to act as a participating dealer under the schedule contract.” GSA Memorandum (June 24, 2014) at 2.

In this regard, GSAR clause 552.216-73 permits contractors holding GSA schedule contracts to indicate whether a dealer will be participating in the contract, and if there is a participating dealer, the contractor must ensure that the ordering information “shall reflect that in addition to the offeror’s name, address, and facsimile transmission telephone number, orders can be addressed to the offeror’s name, [care of] nearest local dealer.” GSAR clause 552.216-73(e). In addition, GSAR clause 552.232-83 states, in relevant part:

Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor’s name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to:

- (1) Comply with the same terms and conditions regarding prices as the Contractor for sales made under the contract;
- (2) Maintain a system of reporting sales under the contract to the manufacturer . . . ;
- (3) Be subject to audit by the Government, with respect to sales made under the contract; and
- (4) Place orders and accept payments in the name of the Contractor in care of the dealer.

GSAR clause 552.232-83.

GSA advised that where a schedule-holder authorizes a separate entity as a participating dealer, as Canon did with Océ, the regulations provide that “the participating dealer may accept and perform orders issued against the schedule contract, as long as the participating dealer complies with the specific requirements to act in the name of the schedule contractor.” GSA Memorandum (June 24, 2014) at 1. GSA therefore advised that, in its view, “a participating dealer would not be prohibited from proposing to receive an order to perform under the schedule

contract as long as the participating dealer indicates that it is acting in compliance with the requirements established in the provisions [GSAR clauses], i.e., accepting orders in the name of the schedule contractor but in care of the dealer and accepting payments in the name of the schedule holder care/of the dealer.” Id. at 2-3.

Based upon GSA’s view of their regulations, as well as our own review of those regulations, we conclude that a participating dealer is not permitted to submit an offer in its own name. Rather, we find that the regulations permit participating dealers to submit offers only on behalf of or in the name of the entity holding the GSA schedule contract (or here the GSA FSSI BPA). We therefore conclude that the agency reasonably rejected Océ’s proposal because it did not indicate that Océ had submitted the offer as a participating dealer on behalf of or in the name of Canon.

As noted above, it is an offeror’s responsibility to submit an adequately written proposal; contracting agencies are not obligated to go in search of needed information that the offeror has omitted or failed to present. LOGMET, B-400535, Oct. 30, 2008, 2008 CPD ¶ 199 at 3. While Océ contends that its proposal left no doubt that its offer was submitted as a participating dealer under Canon’s GSA schedule contract because it listed Canon’s GSA schedule contract number and Canon’s GSA FSSI BPA number, we believe that DOS reasonably found that Océ’s reference to Canon’s contracts did not clearly indicate that the Océ had submitted the proposal on behalf of or in the name of Canon. In this regard, Océ’s proposal did not specifically state that it was a participating dealer, nor did the proposal specifically direct DOS to information where the agency could find such information.⁴ Additionally, Océ does not dispute that a proposal submitted by a participating dealer must state that the GSA schedule contractor is ultimately responsible for performance of an order.

In sum, we conclude that DOS reasonably found that Océ’s proposal failed to provide the information required to identify itself as a participating dealer by

⁴ Océ also asserts that the contracting officer should have contacted GSA to find out whether Océ was in fact a participating dealer authorized to accept, and propose to accept, orders using Canon’s GSA Schedule prior to rejecting Océ proposal. Océ Comments (July 1, 2014) at 11. While we agree with the protester that it was within the contracting officer’s discretion to contact GSA, we do not believe the agency was required to go in search of this information, which was not contained within Océ’s proposal. Id.

submitting the proposal on the behalf of or in the name of Canon, and reasonably rejected Océ's proposal.

We deny the protest.

Susan A. Poling
General Counsel