



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: SRD Architects

File: B-412498

Date: February 25, 2016

Shirish R. Desai for the protester.
Paul Clay, Esq., and Katie Slayton, Esq., Department of the Navy, for the agency.
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DIGEST

Protest that firm should be ineligible for award because its System for Acquisition Management record did not list, as its primary code, the North American Industry Classification System (NAICS) code required by the solicitation at the time proposals were submitted is denied where the record shows that the contracting officer reasonably relied on other information to find that the awardee met the applicable size standard, and the firm obtained an official change to its primary NAICS code prior to award.

DECISION

SRD Architects, a small business located in Anaheim, California, challenges the selection for negotiations of AGS, Inc., a small business located in San Francisco, California, pursuant to solicitation/synopsis No. N62473-15-R-2417, issued by the Naval Facilities Engineering Command Southwest, Capital Improvements Contract Core, for architectural design and engineering services. The protester argues that the agency should have found AGS ineligible for award because at the time AGS submitted its qualifications statement, AGS had a different primary North American Industry Classification System (NAICS) code than the code required by the solicitation.

We deny the protest.

BACKGROUND

The procurement was conducted using the selection procedures set forth in Federal Acquisition Regulation (FAR) Subpart 36.6 (Architect-Engineer Services). In

accordance with these procedures, on March 26, 2015, the agency announced the subject A/E requirements and invited capable firms to submit Standard Form (SF) 330, "Architect-Engineer Qualifications" statements--referred to hereinafter as proposals. The solicitation provided that the procurement was a section 8(a) small business set-aside under NAICS code 541310, architectural services, which is connected with a size standard of \$7.5 million. RFP at 1; Agency Report (AR) at 2. The solicitation contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for architectural design and engineering services for renovation/repair or new construction of small scale buildings and facilities at various military installations in the Naval Facilities Engineering Command Southwest area of responsibility.

Regarding the NAICS code for this procurement, the solicitation established that the prime firm "shall be an [a]rchitectural firm with primary NAICS code of 541310 ([a]rchitectural services);" however, offerors were not instructed to provide verification of their primary NAICS codes in their proposals.¹ After proposals were submitted, the contract specialist queried the System for Award Management (SAM) in order to verify AGS' primary NAICS code. Searches executed by the contract specialist on June 16 and July 20 revealed that the primary NAICS code assigned to AGS was 541330 (engineering services), which was not the code required for the solicitation. In both instances, however, AGS' profile also listed the required code, 541310 (architectural services). AR, Tab 9, AGS' SAM Profile as of June 16, 2015, at 3; AR, Tab 10, AGS' SAM Profile as of July 20, 2015, at 3. A third search completed on August 26 indicated that AGS' primary NAICS code had been changed to the correct code for the procurement--541310 (architectural services). AR, Tab 11, AGS' SAM Profile as of August 26, at 3.

In addition to reviewing information in SAM, the agency sought confirmation of AGS' eligibility from the small business administration (SBA). On September 8, the SBA informed the agency that: "[t]he firm, AGS, Inc. is an 8(a) firm, is current with its reporting requirements, and is eligible for award. The firm is capable and qualified to perform on the award." AR, Tab 15, SBA email, Sept. 8, 2015. AGS' primary NAICS code was not specifically addressed during this exchange, but, as of September 11, AGS' SAM profile listed 541310 (architectural services) as its primary NAICS code. AR, Tab 16, AGS' SBA Profile as of Sept. 11, 2015, at 3.

On September 10, the agency notified SRD that it had not been selected to proceed to negotiations, and on September 16, the agency provided the protester with a pre-

¹ In this regard, the solicitation only required that offerors have an active SAM record. RFP at 7.

award debriefing.² On September 18, SRD filed an agency-level protest based on a representation from the SBA that AGS had the incorrect primary NAICS code for the procurement (541330--engineering services), rather than the correct code (541310--architectural services). SRD also complained that AGS had misrepresented itself by changing its primary NAICS code to the architectural services code in SAM without SBA approval.³ Agency-Level Protest, Sept. 18, 2015.

In response to SRD's agency-level protest, the agency requested formal clarification from the SBA regarding AGS' primary NAICS code, and was informed that AGS' primary NAICS code was 541330 (engineering services). After corresponding with both the SBA and AGS, on October 13, the agency asked SBA to expressly confirm that AGS was ineligible for award because it had the incorrect primary NAICS code. Instead, the SBA prompted AGS to request a change of its primary NAICS code, and, on October 28, the SBA confirmed that AGS' primary NAICS code had been officially changed to 541310 (architectural services). AR at 5. Based on the change in AGS' primary NAICS code status, the agency denied SRD's agency-level protest on November 19, and this protest followed on November 25.

DISCUSSION

SRD argues that the agency should consider AGS ineligible for award because AGS did not have the correct primary NAICS code listed in its SAM record at the time it submitted its proposal.⁴ Specifically, SRD complains that, at the time AGS submitted its proposal, the primary NAICS code assigned to AGS in the System for Award Management (SAM) was 541330 (engineering services), rather than 541310 (architectural services). As explained below, we see no reason for the agency to forego award to AGS based on its primary NAICS code designation at the time proposals were submitted, given that (1) the contracting officer had a reasonable basis for concluding that AGS met the size standard required by the solicitation, and (2) AGS in fact had the desired primary code prior to award.

In connection with the first point, the SBA establishes small business size standards--expressed as either a maximum number of employees or annual receipts in millions of dollars--on an industry-by-industry basis. FAR § 19.102(a)(1).

² The procedures for the procurement of A/E services under FAR Subpart 36.6 do not include a price competition; rather, the agency selects the most highly qualified firm and negotiates with it.

³ AGS confirmed that it had changed its primary NAICS code in SAM in July, based on a discussion with an SBA representative. AR at 3.

⁴ While we do not discuss them all here, we have considered all of SRD's arguments and find that none provide a basis to sustain the protest.

SBA identifies the size standards using NAICS codes. 13 C.F.R. § 121.201 (2016). The FAR provides that size standards are “applied” by classifying the product or service being acquired under the NAICS code that best describes it; identifying the size standard SBA established for that industry; and specifying the size standard in the solicitation so that offerors can appropriately represent themselves as large or small. FAR § 19.102(b). So long as a company meets the applicable size standard, we are aware of no statutory or regulatory requirement that it have the particular NAICS code identified in the solicitation as its primary code. High Plains Computing, Inc. d/b/a HPC Solutions, B-409736.2, Dec. 22, 2014, 2014 CPD ¶ 379 at 6-7.

Here, the record shows that the contract specialist had a reasonable basis upon which to conclude that AGS was eligible for award under the size standard associated with the solicitation. This information included affirmations from the SBA, as well as the fact that the NAICS code required for this procurement was listed on AGS’ SAM profile, albeit not as AGS’ primary code. Additionally, even to the extent that the solicitation itself went beyond the requirements of statute and regulation in imposing a requirement that the prime firm have 541310 as its primary NAICS code, there was nothing in the solicitation to indicate that this requirement could not be satisfied up to the date of award.⁵ Accordingly, based on our review of the record, we have no reason to find the agency’s selection of AGS for award unreasonable.

The protest is denied.

Susan A. Poling
General Counsel

⁵ SRD also complains that the SBA erred in its determination that AGS’ primary NAICS code should be 541310 (architectural services). According to the protester, the SBA improperly considered the experience and revenues of another firm, in addition to the experience and revenues of AGS when approving the change to AGS’ primary NAICS code. This complaint is akin to a challenge to the SBA’s size determination, and our Office generally has no jurisdiction to review size determinations. The Small Business Act, 15 U.S.C. § 637(b)(6), gives the SBA, not our Office, the conclusive authority to determine matters of small business size status for federal procurements. Bid Protest Regulations, 4 C.F.R. § 21.5(b)(1); Mark Dunning Indus., Inc., B-405417.2, Nov. 19, 2013, 2013 CPD ¶ 267 at 5. We therefore will not review a protester’s challenge to another company’s size status, nor will we review a decision by the SBA that a company is, or is not, a small business for purposes of federal procurements.