



United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

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Decision

Matter of: Technica Corporation

File: B-413339

Date: September 19, 2016

Jerald S. Howe Jr., Esq., Samuel W. Jack, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for the protester.
LaTonya McFadden, Esq., Defense Information Systems Agency, for the agency.
Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's interpretation of a solicitation as requiring vendors to recertify their small business status as of the time for submission of quotations for a task order is denied where a solicitation amendment reasonably advised vendors of this requirement.
 2. Protest challenging the basis for award set forth in a solicitation is dismissed where the protester is not an interested party because the agency rejected the protester's quotation for failing to recertify its small business status.
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DECISION

Technica Corporation, of Dulles, Virginia, protests the terms of request for quotations (RFQ) No. 1096408, which was issued by the Defense Information Systems Agency (DISA), Defense Information Technology Contracting Organization, for solution engineering and implementation support services. Technica argues that the solicitation improperly provides for award to the vendor that submits the lowest-priced, technically-acceptable (LPTA) quotation. The protester also argues that the agency improperly rejected its quotation on the basis that the protester failed to recertify its small business size status and is therefore not eligible to compete for the award of the task order.

We deny the protest in part and dismiss it in part.

BACKGROUND

The RFQ was issued on June 1, 2016, and sought quotations to provide solution engineering and implementation support for DISA's Services Directorate and Mission Partner Engagement Office. The RFQ was issued under the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4 and was limited to vendors holding contracts under FSS schedule 70 for information technology. RFQ at 1. The RFQ anticipates the issuance of a fixed-price task order with a 1-year base period and two 1-year options. Id. The RFQ provides for award to the vendor that submitted the LPTA quotation. Id.

The RFQ was set aside for small business vendors and stated that the applicable North American Industry Classification System (NAICS) code for the procurement is 541519, with a corresponding size standard of \$27.5 million. RFQ at 1; RFQ amend. 002 at 1. In addition, RFQ amendment 004, which addresses questions submitted by prospective vendors, included the following question and answer (Q&A) regarding vendors' size status: "[Question 1:] Will the prime offeror be required to certify as a small business at the time of submission for [this solicitation] . . . [Answer 1:] Yes." RFQ amend. 004, attach. 8, at 1.

Prior to the quotation due date of July 1, Technica filed this protest challenging the solicitation's use of an LPTA award basis. Technica also submitted a timely quotation in response to the RFQ. The protester raises two primary arguments: (1) FAR subpart 8.4 does not authorize competitions for orders on an LPTA award basis, and (2) the requirements of the RFQ are too complex and high-risk to justify the award of a task order on an LPTA basis. Protest at 5-8. In the alternative, the protester argues that the solicitation's evaluation criteria are vague and do not provide adequate detail regarding the agency's requirements. Id. at 8-11.

DISA filed its report on the protest on August 1, responding to the protester's arguments regarding the use of LPTA award criteria and the terms of the solicitation. Technica filed its comments on the agency report on August 8. On August 10, the agency notified Technica that it had rejected Technica's quotation because it failed to certify its small business status as of the time for submission of quotations. Also on August 10, DISA requested that we dismiss the protest, based on the agency's conclusion that Technica was not a small business eligible to compete for the issuance of the task order. Agency Request for Dismissal (Aug. 10, 2016) at 1. On August 16, Technica challenged the agency's rejection of its quotation, arguing that the RFQ did not require vendors to recertify their small business status. Protester's Response to Request for Dismissal (Aug. 16, 2016) at 3-4.

DISCUSSION

Technica argues that the solicitation improperly provides for award on an LPTA basis. Technica also argues that the RFQ did not require vendors to recertify their small business status, and that the agency therefore had no basis to reject its quotation. For the reasons discussed below, we agree with DISA that the solicitation required vendors to recertify their status as a small business as of the time for submission of quotations, and that Technica failed to do so. We therefore find no basis to conclude that the agency improperly rejected Technica's quotation. For this reason, we also conclude that the protester is not an interested party to challenge the terms of the solicitation.

The Small Business Act, 15 U.S.C. § 637(b)(6), gives the Small Business Administration (SBA), not our Office, conclusive authority to determine matters of small business size status for federal procurements. Consistent with this statutory limitation, our Bid Protest Regulations provide that “[c]hallenges of . . . the size status of particular firms . . . may be reviewed solely by the Small Business Administration.” 4 C.F.R. § 21.5(b)(1); see also Mark Dunning Indus., Inc., B-405417.2, Nov. 19, 2013, 2013 CPD ¶ 267 at 5. Our review here does not address whether DISA reasonably concluded that Technica was not a small business under the size standard for this procurement. Rather, consistent with other decisions issued by our Office, we review the protester's argument that the RFQ did not require vendors to recertify their small business size status and that the protester's failure to do so does not render it ineligible to compete for the award. See, e.g., InuTeq, LLC, B-411781, Oct. 21, 2015, 2015 CPD ¶ 324 at 4-6.

As relevant here, when a firm is awarded an indefinite-delivery, indefinite-quantity (ID/IQ) contract (such as an FSS contract) as a small business, the firm is generally considered a small business throughout the life of that contract, and is not required to recertify its size status for each order issued under the contract. 13 C.F.R. §§ 121.404(a)(1)(i), (g); see Enterprise Info. Servs., Inc., B-403028, Sept. 10, 2010, 2010 CPD ¶ 213 at 3. Agencies have the discretion, however, to request that vendors recertify their business status as of the time for submission of proposals or quotations for an order. 13 C.F.R. §§ 121.404(a)(1)(i), (g). If a solicitation expressly requires a vendor to recertify its size status in response to a solicitation for an order, SBA will determine the size of the vendor as of the date of the recertification. Id. § 121.404(g)(3)(v).

An agency is not required to use the words “certify” or “recertify” in a solicitation when requesting that vendors or offerors recertify their small business size status in connection with a task order competition. InuTeq, LLC, supra, at 5. Rather, as SBA's Office of Hearings and Appeals has held, the relevant consideration is whether the solicitation was “reasonably understood as a request to recertify at the task order level.” Id. (citing Metters Indus., Inc., SBA No. SIZ-5456, at 9, 10 (2013)).

The agency set aside the RFQ here for small businesses. As discussed above, RFQ amendment 004 included a Q&A which addressed the following question in the affirmative: "Will the prime offeror be required to certify as a small business at the time of submission for [this solicitation]." RFQ amend. 004, attach. 8, at 1. Here, Technica does not dispute that, as of the time it submitted its quotation, it did not and could not represent that it was a small business under the size standard applicable to the solicitation. See Protester's Response to Request for Dismissal (Aug. 16, 2016) at 2.¹ Instead, the protester argues that it was a small business as of the time it was awarded an FSS contract, and that nothing in the RFQ, including the Q&A discussed above, required vendors to recertify their small business status. Accordingly, the protester argues that the agency had no basis to reject its quotation.

We think the Q&A in RFQ amendment 004 reasonably advised vendors that they were required to recertify their small business size status as of the time for submission of quotations. In a protest concerning a request for proposals for a task order competition under a multiple award ID/IQ, our Office held that solicitation provisions advising vendors that their size status would be assessed as of the time of proposal submission was a request for recertification of a vendor's small business status. InuTeq, LLC, supra, at 5-6. In another decision regarding a Q&A in an RFQ amendment, which used language nearly identical to the Q&A at issue here, we concluded that the Q&A put vendors on notice of the requirement to recertify their business status in a manner that rendered untimely a protest that was filed after the time for receipt of quotations. Creative Computing Solutions, Inc., B-408704, B-408704.2, Nov. 6, 2013, 2013 CPD ¶ 262 at 3 (addressing a Q&A which stated as follows: "[Question:] 'Is the Government requiring Offerors to certify as a Small Business at time of proposal submission?' [Answer:] 'Yes.'").

On this record, we agree with DISA that the RFQ required vendors to recertify their small business size status at the time for submission of quotations.² For this reason, we have no basis to find that the agency unreasonably rejected the

¹ Technica's System for Award Management (SAM) profile shows that, as of March 21, 2016, it is not a small business under NAICS code 541519. Request for Dismissal, Exh. 2, Technica SAM Profile, at 20.

² DISA also notes that Technica's quotation stated the following regarding its size status: "Technica submits this quotation in its capacity as a small business concern for Contract GS-35F-0171V and makes no additional size certification in connection with this quotation." Request for Dismissal, Exh. 1, Technical Quotation, at 1. The agency contends that this statement demonstrates that the protester understood the requirement to recertify its small business status as of the time for submission of quotations.

protester's quotation for failure to recertify that it was a small business. Further, because Technica is ineligible to compete for the award, we conclude that it is not an interested party to challenge the terms of the solicitation, and dismiss its remaining arguments. See Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) ("Interested party means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract."); Creative Computing Solutions, Inc., supra, at 3.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel