



Decision

Matter of: Crosstown Courier Service, Inc.

File: B-414752

Date: September 1, 2017

Nancy M. Camardo, Esq., Camardo Law Firm, P.C., for the protester.
David G. Fagan, Esq., Department of Veterans Affairs, for the agency.
Frank Maguire, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's argument that awardee will not comply with the solicitation's limitation on subcontracting requirements is denied where the protester points to no part of the awardee's quotation where the awardee has not agreed to comply with the solicitation's limitation on subcontracting provisions, the agency advises that nothing on the face of the awardee's quotation led it to conclude that the awardee would not comply with the solicitation's subcontracting limitations, and our review of the quotation gives us no basis to question the agency's judgment.

DECISION

Crosstown Courier Service, Inc. (Crosstown), of Chicopee, Massachusetts, protests the award of a contract to FG Management Group (FGMG), of Maplewood, New Jersey, under request for quotations (RFQ) No. VA260-17-Q-0329, issued by the Department of Veterans Affairs (VA) for courier services. Crosstown challenges FGMG's compliance with applicable limitation on subcontracting requirements.

We deny the protest.

The RFQ, which was set aside for service-disabled veteran-owned small businesses, contemplated the award of a fixed-priced, indefinite-delivery, indefinite-quantity contract for courier services for the Boise VA Medical Center lab, pharmacy, and radiology departments, for one base year and three option years. RFQ at 1. Award was to be made on a lowest-priced technically acceptable basis, considering the following four evaluation factors: recent or current relevant experience; capabilities to perform service; past performance; and price. RFQ at 65-66.

Quotations were received from six offerors, four of which, including Crosstown and FGGM, were found technically acceptable. Agency Report (AR) at 2. FGGM submitted the lowest-priced quotation. Id. The contracting officer (CO) found FGGM to be a responsible offeror and made award to FGGM.

Crosstown challenges the award to FGGM, arguing that FGGM has only one employee, is not a courier services company, and has no prior government contracts for medical courier services of similar scope. Protest at 3. The protester asserts therefore that the awardee's quotation "strongly evidences" the awardee's noncompliance with Federal Acquisition Regulation (FAR) clause 52.219-14 (Limitation on Subcontracting). Comments at 2. In this regard, Crosstown asserts that, although FGGM's teaming agreement indicates that FGGM will provide 51 percent of the direct labor and its teaming partner will provide no more than 49 percent of the labor, "[b]eyond this general representation, no other support is given that this [subcontracting] requirement would be met." Id. at 2. Crosstown points to several asserted uncertainties with regard to the teaming agreement and posits a scenario under which FGGM would not comply with the subcontracting requirements. Id. at 3.¹

First, we note that the protester's argument regarding FGGM's alleged noncompliance with the requirements of FAR clause 52.219-14 is misdirected, in that this clause was not incorporated into the solicitation. Instead, the RFQ included VA Acquisition Regulation (VAAR) clause 852.219-10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside. RFQ at 34-35. This clause provides as follows in subsection (c):

(c) *Agreement.* A service-disabled veteran-owned small business concern agrees that in the performance of the contract, the concern will comply with the limitation on subcontracting requirements in 13 C.F.R. § 125.6.

Section 125.6, in turn, provides as follows with regard to services contracts:

(1) In the case of a contract for services (except construction), it will not pay more than 50% of the amount paid by the government to it to firms that are not similarly situated. Any work that a similarly situated

¹ In its initial protest, Crosstown also argued that FGGM lacked recent or current relevant experience as required by the solicitation; that FGGM was not classified under the North American Industry Classification System (NAICS) code assigned to the solicitation; and that FGGM's price was unrealistically low. Protest at 2-3. The agency addressed these allegations in its report, but Crosstown did not respond with regard to these issues in its comments on the agency report. Accordingly, we consider these protest grounds abandoned. Earth Res. Tech., Inc., B-403043.2, B-403043.3, Oct. 18, 2010, 2010 CPD ¶ 248 at 6.

subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded.

An agency's judgment as to whether a small business offeror can comply with a limitation on subcontracting clause is generally a matter of responsibility and the contractor's actual compliance is a matter of contract administration. Ashridge, Inc., B-408469, Sept. 27, 2013, 2013 CPD ¶ 250 at 7. Neither issue is one that our Office will consider. However, where a proposal, on its face, should lead an agency to the conclusion that an offeror has not agreed to comply with the subcontracting limitation, the matter is one of the proposal's acceptability, which our Office may consider. EcoAnalysts, Inc., B-406233 et al., Mar. 19, 2012, 2012 CPD ¶ 169 at 3; TYBRIN Corp., B-298364.6, B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 5. Such circumstances, however, are not present here.

In this regard, the protester points to no part of FGGM's quotation in which FGGM indicates an intention not to comply with the RFQ's subcontracting limitations. In addition, VA advises that nothing on the face of FGGM's quotation led it to conclude that FGGM would not comply with the RFQ's subcontracting limitations and our review of the quotation gives us no basis to question the agency's judgment. See ACME Indus., Inc., B-414023, Jan. 13, 2017, 2017 CPD ¶ 22 at 4 (no basis to question agency's judgment regarding awardee's compliance with subcontracting limitations where nothing on the face of the awardee's proposal led the agency to conclude that the firm would not comply with the solicitation's requirements in that regard).²

The protest is denied.

Susan A. Poling
General Counsel

² Although the protester posits circumstances in which it asserts that FGGM would not perform 50 percent of the contract work, Comments at 2-3, this argument does not demonstrate that FGGM's quotation indicates, on its face, that FGGM will not comply with the RFQ's subcontracting requirements.