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Decision

Matter of: Performance Value Management, LLC

File: B-416226; B-416226.2

Date: July 12, 2018

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Eden Brown Gaines, Esq., Brown Gaines, LLC, for Graham Technologies, LLC, the intervenor.

Jonathan A. Hardage, Esq., Department of the Army, and Meagan K. Guerzon, Esq., Small Business Administration, for the agencies.

Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency and the Small Business Administration (SBA) violated regulations in accepting work into the SBA's 8(a) contracting program is denied where the record fails to establish that the protester suffered prejudice as a result of alleged inadequacies in the contracting agency's initial offering letters to SBA.

DECISION

Performance Value Management, LLC (PVM), a small business located in Fairfax, Virginia, protests a decision by the Department of the Army and the Small Business Administration (SBA) to place two requirements, currently performed by PVM as a single requirement under SBA's 8(a) Business Development (BD) program, for award under the 8(a) program, to two other contractors on a sole-source basis. PVM argues that the Army's offering letters of the two requirements to SBA, and the SBA's resulting decision to accept the requirements, violated applicable regulations.

We deny the protest.

BACKGROUND

On April 18, 2016, the Army awarded contract No. W15QKN-16-C-0015 to PVM via a competitive 8(a) source selection under the SBA's section 8(a) program, for project management operations services (PMOS) in support of the Project Management Office for Department of Defense (DoD) Biometrics located at Fort Belvoir, Virginia. PVM's

contract consisted of requirements from four prior contracts, which the Army elected to bundle into a single contract based on the belief that consolidating the requirements would streamline services, promote high contract performance efficiency and decrease costs.¹ PVM's contract had a period of performance of a base year, with two 1-year options, and one 3-month option. Contracting Officer Statement/Memorandum of Law (COS/MOL) at 2. The first option period concluded on April 18, 2018. Id.

During contract performance, the Army issued [DELETED] to PVM regarding [DELETED]. COS/MOL at 3-4. Based on concerns that the agency could not exercise the second option on PVM's contract due to [DELETED], the Army contracting officer contacted the SBA 8(a) program office to discuss alternative strategies for addressing the Army's PMOS requirements.² The Army explains that it sought a solution that would reduce the risk of unsuccessful performance by another vendor and allow the requirements to successfully remain in the section 8(a) program.

Ultimately, the Army determined that unbundling the work into two smaller requirements would allow the Army to achieve greater savings and benefits, while ensuring the contracts could adequately be performed by 8(a) program vendors. Id. at 5. The SBA concurred with the Army's determination. Id. In addition, the Army concluded that this course of action would address the DoD Biometrics' change in mission and increased portfolio size, which had grown too complex and difficult for only one 8(a) company to accomplish. Id.

On February 10, 2018, PVM graduated from the 8(a) program. On February 14, the SBA 8(a) program office gave a verbal approval to the Army to modify the current option on PVM's contract to assure funding to completion of the option. Declaration of Contracting Officer, Apr. 19, 2018, at 2. In support of this effort, the Army began working with the SBA program office to match the Army's two requirements with 8(a) participant capabilities. Agency Report (AR), Tab 13, Encl. 4, at 2-19; Supp. AR at 3. Specifically, the Army pursued two prospective RFPs: the first, RFP No. W909MY-19-R-J005, involved project management support services; and the second, RFP No. W909MY-18-R-J006, involved project level engineering, architecture and cybersecurity services. COS/MOL at 5.

With the assistance of a small business specialist, the Army conducted market research, and selected two qualified, eligible 8(a) program vendors: Integrated Finance and Accounting Solutions, LLC (IFAS), of Woodbridge, Virginia, and Graham

¹ Specifically, these requirements encompassed (1) program management and engineering support services; (2) project management operation support services; (3) joint personnel identification subject matter expert support services—information assurance/cyber security; and (4) strategic business and financial management support services.

² The contracting officer states that the SBA 8(a) Program Office "is aware and tracking the [DELETED] with PVM." Declaration of Contracting Officer, Apr. 19, 2018, at 2.

Technologies, LLC, of Largo, Maryland. In selecting the vendors, the Army reviewed Contractor Performance Assessment Reporting System (CPARS) information, requested approved accounting systems reports, and verified that each vendor maintained current top secret facilities clearances within the Joint Personnel Adjudication System (JPAS) system. COS/MOL at 5. In addition, the Army confirmed that the vendors had knowledge and experience in their respective performance areas, and maintained current, active 8(a) certified status. Id.

By separate offering letters to SBA dated March 7, 2018, the Army offered to contract with IFAS for project management support services, and Graham Technologies for project level engineering, architecture and cybersecurity services requirements, under the section 8(a) program. AR, Tab 11A, IFAS Offer, at 1; Tab 11C, Graham Offer, at 1. The Army's letter for IFAS was provided to SBA's Richmond District Office, and identified IFAS as the preferred recipient of the contract for the project management support services. AR, Tab 11A, IFAS Offer, at 1. The Army's letter for Graham Technologies was provided to SBA's Washington, D.C. Office, and identified Graham Technologies as the preferred recipient of the contract for the engineering, architecture and cybersecurity services. AR, Tab 11C, Graham Offer, at 1. The letters advised SBA that the Army anticipated awarding cost-plus-fixed-fee and cost-no-fee contracts, with periods of performance of 12 months, at estimated total values of \$3,828,721, and \$3,946,932, respectively. AR, Tab 11A, IFAS Offer, at 1-2; Tab 11C, Graham Offer, at 1-2.

Each of the Army's offering letters also represented to SBA that "[i]t is not reasonably expected that this procurement could be won by a Disadvantaged concern under normal competition." Id. at 2. To assist the SBA with its impact determination, the letters identified North American Industry Classification System (NAICS) Code 541519, for Other Computer Related Services; they also identified, after the bullet "24 months of Procurement history," the following contract No.: W15QKN-16-C-0015. Id. at 1. The Army attached to each offering letter a packet of information regarding the capabilities of the nominated company. AR, Tab 13, Encl. 4, at 18, Graham Email Mar. 7, 2018, att. 3, GT Overview Brief, at 1-21; id. at 19, IFAS Email, Mar. 7, 2018, at 1, att. 3, IFAS Capabilities, at 1-21. As another attachment to each offering letter, the Army provided the Performance Work Statement (PWS) for the pertinent requirements. AR, Tab 13, Encl. 4, at 18, Graham Email, Mar. 7, 2018, att. 2, Engineering PWS; id. at 19, IFAS Email, Mar. 7, 2018, at 1, att. 2, PMOS PWS.

SBA's Richmond Office accepted the Army's offering on behalf of IFAS on March 8. As part of its acceptance letter to the Army, the SBA concluded that there was not an adverse impact on a small business outside the 8(a) program because:

- (1) No small business performed this requirement for at least 24 months;
- (2) No small business was performing the requirement at the time this requirement was offered to the 8(a) BD [p]rogram, or the small business's performance of the requirement ended within 30 days of the procuring activity's offer of the requirement into the 8(a) BD [p]rogram; (3) and the dollar value of the requirement that the small business is or was

performing does not constitute 25 percent or more of its most recent annual gross sales (including those of its affiliates).

AR, Tab 11B, IFAS Acceptance, at 1.

The SBA Washington, D.C. Office accepted the Army's offering on behalf of Graham Technologies on March 14. As part of its acceptance letter to the Army, SBA explained that the 8(a) opportunity is a new requirement. AR, Tab 11D, Graham Acceptance, at 1.

On March 15, the Army notified PVM that it had elected not to exercise the second option on PVM's contract No. W909MY-16-C-0015. AR, Tab 10C, Option Notification, at 1. On March 26, the Army notified PVM that it intended to award two sole-source 8(a) contracts on an interim basis. This protest followed.

DISCUSSION

PVM argues that the Army failed to comply with applicable regulations for placing "new requirements" for the two proposed sole-source contracts under SBA's section 8(a) contracting program. Specifically, the protester contends that the Army's offering letters failed to include an accurate acquisition history for the requirements, and the name and address of the small business that had been performing the requirement during the previous 24 months.³ The protester asserts that, without this information, the SBA could not have reasonably assessed whether to accept the new requirements into the 8(a) program.⁴

Section 8(a) of the Small Business Act authorizes SBA to enter into contracts with government agencies and to arrange for performance of such contracts by awarding subcontracts to socially and economically disadvantaged small businesses. 15 U.S.C. § 637(a). The Act affords SBA and contracting agencies broad discretion in selecting procurements for the 8(a) program; we will not consider a protest challenging a decision to procure under the 8(a) program absent a showing of possible bad faith on the part of government officials or that regulations may have been violated. 4 C.F.R. § 21.5(b)(3); Designer Assocs., Inc., B-293226, Feb. 12, 2004, 2004 CPD ¶ 114 at 4.

³ The protester also contends that the Army's offering letters failed to provide information regarding the agency's justifications for nominating Graham Industries and IFAS as the sole-source contractors. See 13 C.F.R. § 124.502(c)(12). We disagree. As noted above, the Army provided information detailing the capabilities of the proposed vendors with each offering letter. AR, Tab 13, Encl. 4, at 18, Graham Email, Mar. 7, 2018, att. 3, GT Overview Brief, at 1-21; id. at 19, IFAS Email, Mar. 7, 2018, at 1, att. 3, IFAS Capabilities, at 1-21. We find that this information satisfies the requirement in the regulation that the agency provide a "brief justification."

⁴ Although this decision does not address all of the protester's arguments in detail, we have considered each and find that none provides a basis to sustain the protest.

Under the Act's implementing regulations, SBA may not accept any procurement for award as an 8(a) contract if doing so would have an adverse impact on an individual small business, a group of small businesses in a specific geographic location, or other small business programs. 13 C.F.R. § 124.504(c). The purpose of the adverse impact concept is to protect incumbent small businesses who are currently performing an offered requirement outside the 8(a) program. Id. The adverse impact concept, however, does not apply to follow-on or renewal 8(a) acquisitions. Id. It also does not apply to "new" requirements, which have not been previously purchased by the procuring agency. 13 C.F.R. § 124.504(c)(1)(ii). In this regard, the regulations explain that "[w]here a requirement is new, no small business could have previously performed the requirement and, thus, SBA's acceptance of the requirement for the 8(a) BD program will not adversely impact any small business." 13 C.F.R. § 124.504(c)(1)(ii)(A).

To avoid adverse impacts, and to obtain other information necessary for SBA to determine that an offered requirement is eligible and appropriate for award under the 8(a) program, SBA's regulations require that contracting agencies furnish detailed information about a procurement when offering it for inclusion in the program. 13 C.F.R. § 124.502. In this regard, 13 C.F.R. § 124.502(c) sets forth 17 items of information that must be identified in a contracting agency's letter offering work for inclusion in the SBA's 8(a) program. See also Federal Acquisition Regulation (FAR) § 19.804-2(a). As a general matter, the SBA is entitled to rely on a contracting agency's representations regarding the offered requirement. C. Martin Co., Inc., B-292662, Nov. 6, 2003, 2003 CPD ¶ 207 at 7.

As relevant here, one of the items required to be included in an agency's offering letter is the "acquisition history, if any, of the requirement, including specifically whether the requirement is a follow-on requirement, and whether any portion of the contract was previously performed by a small business outside of the 8(a) BD program." 13 C.F.R. § 124.502(c)(9). A second item is the "names and addresses of any small business contractors which have performed on this requirement during the previous 24 months." 13 C.F.R. § 124.502(c)(10).

PVM asserts that the sole-source contracts were improper because the Army's offering letters did not provide the acquisition history for the requirements, or the name and address for the small business contractor currently performing the requirements (i.e., PVM). In response, the Army argues that, because the two requirements are new, it logically follows that there is no acquisition history, nor any small business contractors that performed the requirements during the previous 24 months. The agency therefore maintains that it did not fail to meet the regulatory requirements as the protester asserts. Supp. AR at 5.

Alternatively, the Army points out that the offering letters provided the contract number for PVM's incumbent contract. The Army also states that in the months leading up to the offer and acceptance of the requirements into the 8(a) program, the Army engaged in discussions with the SBA 8(a) program office, during which time, the Army contracting officer provided the SBA, including the individual who signed the Graham acceptance letter, with the complete history of PVM's incumbent contract, including

providing a full copy of PVM's contract and all contract modifications. See AR, Tab 13, Encl. 4, Email Corr. Army/SBA, at 1-19.

As explained below, even assuming that the letters were incomplete--and did not provide all of the required information--the record demonstrates that the relevant SBA offices obtained sufficient information upon which to reasonably base their decisions to accept the two new requirements into the 8(a) program. The protester was therefore not prejudiced by any omissions.

With regard to Graham Technologies, the SBA's acceptance letter concluded that the requirement was a new requirement. AR, Tab 11D, Graham Acceptance, at 1. Under SBA's regulations, a requirement is considered new where the magnitude of change is significant enough to cause a price adjustment of at least 25 percent (adjusted for inflation). 13 C.F.R. § 124.504(c)(1)(ii)(C). As the protester itself acknowledges, both of the requirements at issue here constitute "new" requirements under SBA's regulations. This is because, as the protester explains, the current contract value is \$21 million, whereas the value of each of the two proposed sole-source contracts is less than \$4 million. Protest at 9. As the protester also states, "the magnitude of the change would result in a price adjustment of more than 25% and under the SBA's regulations, those contracts would constitute a new requirement that is not a follow-on contract that must be awarded through the 8(a) program." Id. Furthermore, as noted above, a conclusion that the requirement is a new requirement, by SBA definition, means that an adverse impact analysis is not required. 13 C.F.R. § 124.504(c)(1)(ii).

As noted above, the record reflects that the Army's offering letter for Graham identified contract No. "W15QKN-16-C-0015," which is PVM's incumbent contract under SBA's 8(a) program, as the "24 months of Procurement History" for the requirement. AR, Tab 11C, Graham Offer, at 1. Further, the record reflects that the Army emailed a complete copy of PVM's contract No. W15QKN-16-C-0015, including all modifications to the contract, to numerous individuals in SBA's 8(a) office (including the individual at SBA's Washington, D.C. field office who signed the Graham acceptance letter), prior to submission of the Graham offering letter. AR, Tab 13, Encl. 4, Emails Army/SBA, Feb. 8, 2018, at 4. In addition, the record reflects that the Army sent to numerous individuals at the SBA 8(a) program office (including the individual who signed the Graham acceptance letter at SBA's Washington, D.C. field office) a "task way-ahead" explaining the Army's rationale for dividing the current requirement. AR, Tab 13, Encl. 4, Army/SBA Emails, Feb. 14, 2018, at 15. Attached to this email were the performance work statements and independent government cost estimates for each of the individual requirements. Id.

Based on this record, we agree with the Army that the SBA Washington, D.C. field office obtained sufficient information to reasonably determine that the offered requirement was a new requirement appropriate for acceptance into the 8(a) program.

With regard to IFAS, the SBA Richmond field office acceptance letter concluded that there was no adverse impact to any small business outside of the 8(a) program because no small business had been performing the work outside of the 8(a) program.

AR, Tab 11B, IFAS Acceptance, at 1. We find that this conclusion by the SBA office is consistent with the record provided by the protester and agency here, which shows that PVM has been performing the consolidated requirements since 2016 under an SBA 8(a) program contract.

To the extent the Army failed to provide required information to the SBA's Richmond field office, PVM has failed to demonstrate how it has been prejudiced by such an error.⁵ Competitive prejudice is an essential element of every viable protest. Diverco, Inc., B-259734, Apr. 21, 1995, 95-1 CPD ¶ 209 at 4. In this regard, the protester argues that if the Richmond field office had been provided additional information regarding the acquisition history and PVM, it might have concluded not to accept the requirement into the 8(a) program, which would have afforded PVM an opportunity to compete for the requirement outside of the 8(a) program. As previously noted, however, the protester acknowledges that both requirements constitute "new" requirements. Furthermore, the record reflects both that PVM's incumbent contract was awarded under the 8(a) program, and that the Army intends to keep the requirements in the 8(a) program.⁶ Declaration of Contracting Officer, Apr. 19, 2018, at 2. Under the circumstances here,

⁵ The protester also asserts that the Army's offering letters failed to include required information concerning the identification of any 8(a) firms that have expressed an interest in being considered for the acquisition. See 13 C.F.R. § 124.502(c)(14). Because PVM is no longer an 8(a) firm, we also find that the protester has not demonstrated how it has been prejudiced by the agency's failure to identify in the offering letters any other 8(a) firms that expressed an interest in being considered for the acquisition. Accordingly we do not address this issue further.

⁶ To the extent the protester relies on 13 C.F.R. § 124.504(d)(2), which provides that SBA may decline to accept the offer of a follow-on or renewal 8(a) contract in order to allow a concern previously awarded the contract, and who is leaving or has left the program, the opportunity to compete for the requirements outside of the 8(a) BD program, we find that such reliance is misplaced. As noted above, the protester acknowledges that the two requirements are new requirements and therefore cannot be characterized as follow-on acquisitions or renewal contracts. Protest at 9. Further, SBA's regulations provide that SBA will consider release of a requirement from the 8(a) program only where "[t]he concern requests in writing that SBA decline to accept the offer prior to SBA's acceptance of the requirement for award as an 8(a) contract." 13 C.F.R. § 124.504(d)(2)(i)(B). Here, although PVM graduated from the 8(a) program in February 2018, it waited until April 10, 2018, which was after it filed the instant protest, to submit a written request to SBA asking that the requirements be released from the 8(a) program. Comments at 3, n.3. As such, PVM failed to submit the request prior to SBA's acceptance of the requirements as 8(a) awards, as specified by SBA's regulations.

we see no reasonable possibility that the SBA district office would have come to a different conclusion if the Army had provided additional acquisition history, or the name and address of PVM, in its offering letter.

The protest is denied.

Thomas H. Armstrong
General Counsel