



Decision

Matter of: Service Connected, Inc.

File: B-416324

Date: June 11, 2018

Joshua Fine, for the protester.

Azine Farzami, Esq., Department of Agriculture, 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. Protester that was awarded a multiple-award blanket purchase agreement (BPA) is an interested party to challenge the award of BPAs to other vendors where the terms of the solicitation provided for a ranking of awardees for purposes of placing orders; the protester's eligibility for the issuance of task orders was therefore affected by its ranking as compared to other awardees.
 2. Protest that a solicitation should have included an evaluation preference for service-disabled veteran-owned small businesses is dismissed as untimely where the protest was filed after the time for receipt of initial quotations.
 3. Protest challenging the evaluation of other awardees is dismissed where the solicitation did not require the agency to consider the issues raised by the protester, and where challenges regarding the small business status of awardees is a matter for review by the Small Business Administration.
 4. Protester's arguments that it is entitled to compensation in connection with prior BPAs, and that termination of a prior BPA was improper, are matters of contract administration that our Office does not review.
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DECISION

Service Connected, Inc., of Bakersfield, California, a service-disabled veteran-owned small business (SDVOSB), protests the establishment of blanket purchase agreements (BPAs) with All Site Services, LLC, of Bakersfield, California, a woman-owned small business (WOSB) and Sierra Site Services, LLC, a small business, of Ivanhoe, California, under request for quotations (RFQ) No. 129J6118Q7004, which was issued

by the Department of Agriculture, Forest Service, for services providing portable toilets and sinks. The protester argues that the solicitation should have included a price evaluation preference for SDVOSB firms, the agency failed to reasonably evaluate the awardees' ability to perform the work, the agency unreasonably evaluated proposed prices in connection with this procurement and other prior procurements, and the agency improperly terminated a BPA previously awarded to the protester.

We dismiss the protest.

BACKGROUND

The solicitation was issued on January 19, 2018, and sought quotations to provide and maintain portable toilets and handwashing stations in California, Hawaii, and the U.S. Pacific Islands. RFQ at 1, 52.¹ The solicitation was set aside for small businesses.² Id. at 1, 6. The RFQ provided for the establishment of multiple BPAs, with an ordering period of three years. Id. at 4, 14, 17-18. The solicitation advised vendors that the agency would evaluate quotations based on the following factors: (1) acceptability of proposed equipment, (2) price reasonableness, and (3) past performance risk. Id. at 5. The RFQ stated that the agency would award BPAs to a "sufficient number" of "responsible quoters whose quotes conforming to the solicitation will be advantageous to the Government, price and other factors considered." Id. Proposals were due on February 23, 2018. Id. at 1.

As relevant here, the RFQ stated that the agency would establish a dispatch priority for each requirement, whereby BPA holders would be ranked by price for purposes of placing orders. Id. at 5, 22. Orders will be placed with the vendors with the highest dispatch priority ranking for a particular requirement; if that vendor is not able to complete the order, the next-ranked vendor is eligible for issuance of the order; this process continues until a BPA holder accepts the order. Id. at 22-23. The solicitation further stated that this dispatch priority ranking was to be adjusted by applying a 5 percent price evaluation preference for firms under the socioeconomic categories (other than small businesses) listed in Box 10 of the RFQ's Standard Form 1449. Id. at 1, 6. The solicitation stated that only women-owned small businesses would receive the price evaluation preference.³ Id.

¹ Citations to the RFQ are to the document provided by the agency in the Electronic Protest Docket System file for this protest.

² Although the RFQ stated that the solicitation was set aside for WOSBs, the agency and protester both stated during a conference call with our Office that they understood that the award was intended to be set aside for small businesses, and that WOSBs were to receive a price evaluation preference. See RFQ at 1.

³ For example, if two firms bid the same price, a WOSB firm would be ranked ahead of a non-WOSB firm based on the application of the price evaluation preference.

On April 20, the Forest Service notified Service Connected that it had been selected for the award of a BPA. This protest followed.

DISCUSSION

Service Connected raises four primary arguments: (1) the Forest Service unreasonably failed to include a price evaluation preference in the RFQ for SDVOSB firms; (2) two of the firms awarded BPAs, All Site Services and Sierra Site Services, may not be capable of performing the work and may be “shell company[ies] and alter ego[s]” for other firms; (3) the agency’s evaluation of the reasonableness of vendors’ proposed prices for this and other procurements was unreasonable; and (4) the agency improperly cancelled a BPA established with the protester in 2015. Protest at 3-10. Service Connected’s first three arguments concern, in essence, the protester’s dispatch priority ranking, and therefore its eligibility for the issuance of orders under the terms of the solicitation. For the reasons discussed below, we conclude that the first protest argument is untimely, and the second, third, and fourth arguments fail to state valid bases of protest and raise matters that our Office does not review.⁴ We therefore dismiss the protest.

As an initial matter, our Office generally does not consider firms that receive one of multiple awards to be interested parties to challenge awards to other firms. See Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1); Aegis Def. Servs., LLC, B-412755, Mar. 25, 2016, 2016 CPD ¶ 98 at 3. Here, however, we conclude that the protester is an interested party because it challenges its priority ranking among the BPA holders, which under the terms of the solicitation affects how orders will be issued. In this regard, if the protester’s arguments have merit, its priority ranking could be improved, thereby making it eligible under the terms of the RFQ for issuance of additional orders. We next address the protester’s substantive arguments.

First, Service Connected argues that the solicitation should have included a price evaluation preference for SDVOSB firms. Protest at 4. The protester argues that the RFQ “did not include a [SDVOSB] preference notwithstanding the fact” that there are SDVOSB firms capable of performing the work.⁵ Id. The protester contends that, had it

⁴ On May 16, 2018, the Forest Service filed a request that our Office dismiss the protest. Agency Request for Dismissal, May 16, 2018, at 1. We provided the protester an opportunity to respond to the request for dismissal by close of business (5:30 p.m. ET) on May 21. The protester did not file a response to the agency’s request.

⁵ Service Connected cites Federal Acquisition Regulation (FAR) clause 52.219-8 for the proposition that the agency may include such price evaluation preferences in solicitations, and that such preferences should be granted to SDVOSB firms. Protest at 4. This clause, however, concerns set-asides of solicitations for small business firms; the clause does not provide for price evaluation preferences. See FAR clause 52.219-8; compare with 52.219-4, Notice of Price Evaluation Preference for [Historically Underutilized Business Zone] Small Business Concerns.

received a price evaluation preference, it would have had a higher dispatch priority ranking and would therefore be eligible for the issuance of more orders.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals or quotations be filed before that time. 4 C.F.R. § 21.2(a)(1); see AmaTerra Envtl. Inc., B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3.

Here, the protest was filed on April 30, after the February 23 due date for quotations. The solicitation clearly advised that WOSB firms would receive a price evaluation preference; the solicitation did not state that SDVOSB firms would receive such a preference. RFQ at 1, 6 (box for WOSB checked, box for SDVOSB not checked). We therefore conclude that this protest challenging the terms of the solicitation is untimely. See 4 C.F.R. § 21.2(a)(1).

Next, Service Connected argues that two of the awardees, All Site Services and Sierra Site Services, engaged in fraud in the submission of their quotations regarding their ability to perform the work and their status as small businesses. Protest at 7-10. The protester contends that it was unable to find any “significant business history” regarding the firms through online searches, and contends that these firms may not be capable of performing the work on their own, and may instead subcontract more than 50 percent of the work to other non-small business firms. Id. The protester further contends that All Site Services, which is a WOSB firm, may be acting as a pass-through for a non-WOSB firm that will perform more than 50 percent of the work. Id. at 7. The protester requests that our Office investigate whether the vendors are capable of performing the work. Id. at 8, 10.

Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

Here, Service Connected concedes that the solicitation did not require the Forest Service to conduct a pre-award survey to determine whether vendors have sufficient equipment and personnel to perform the work. Protest at 8. In light of the absence of a requirement for the agency to perform the kind of pre-award investigation that the protester contends would be necessary to demonstrate whether the vendors are capable of performing the work, we conclude that the protest fails to state a valid basis. See 4 C.F.R. § 21.1(c)(4), (f). Although the protester requests that our Office

independently investigate this matter, we do not conduct such investigations as part of our bid protest function. See Coast to Coast Computer Prods., Inc., B-409528.33, Dec. 3, 2014, 2014 CPD ¶ 346 at 6 n.8.

To the extent the protester argues that All Site Services and Sierra Site Services will not comply with the limitation on subcontracting clause, this argument also fails to state a valid basis of protest. FAR clause 52.219-14(c)(1) states that for a contract or order under a small-business set-aside, “[a]t least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.” This clause, however, was not incorporated in the solicitation. See RFQ at 9. In any event, the protester’s speculation as to this matter does not set forth a valid basis of protest. An offeror or vendor need not affirmatively demonstrate compliance with the subcontracting limitations in its proposal or quotation. Express Med. Transporters, Inc., B-412692, Apr. 20, 2016, 2016 CPD ¶ 108 at 6. Instead, such compliance is presumed unless specifically negated by other language in the proposal or quotation. Id. A protester’s general speculation as to whether an offeror or vendor will comply with the limitation on subcontracting does not establish a valid basis of protest. See Dorado Servs., Inc., B-408075, B-408075.2, June 14, 2013, 2013 CPD ¶ 161 at 12.

Additionally, the protester’s arguments that All Site Services and Sierra Site Services should not be considered small businesses or WOSBs based on affiliations with or reliance on other firms, are not matters for our Office’s review. The Small Business Act, 15 U.S.C. § 637(b)(6), gives the Small Business Administration (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.

Next, Service Connected argues that the agency unreasonably evaluated the reasonableness of vendors’ proposed prices. Specifically, the protester contends that the agency found one vendor’s proposed price to be reasonable, despite the fact that its price was higher than prices proposed by the protester and found unreasonably high in connection with a 2015 contract and a modification of a 2017 contract. Protest at 5-6. The protester requests that the agency explain what prices will be considered reasonable in the future for purposes of any future modifications of the BPAs established under the RFQ here. The protester also argues that it should be “compensated” for lost revenue in connection with the rejection of its proposed prices as unreasonably high in connection with the modification of its 2017 contract. Id. at 7.

As our Office has explained, evaluations made in connection with the award of a contract under one solicitation are generally not probative of the reasonableness of an evaluation for a different contract under a different solicitation, given that each procurement stands on its own. AdvanceMed Corp., B-415360 et al., Dec. 19, 2017, 2018 CPD ¶ 4 at 5; Parmatic Filter Corp., B-285288, B-285288.2, Aug. 14, 2000, 2000

CPD ¶ 185 at 7. In particular, an agency's price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment by the contracting officer. FAR § 15.404-1; Comprehensive Health Servs., Inc., B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 8. A judgement that a price was reasonable or unreasonable in connection with one award does not establish that a similar price was reasonable or unreasonable in connection with a different award. PJ Helicopters, Inc., B-402524.2, May 20, 2010, 2010 CPD ¶ 155 at 3.

With regard to the protester's request that the agency provide a definitive statement as to prices the agency considers reasonable, the protester does not cite any requirement for an agency to disclose in advance the agency's determination as to what constitutes a fair and reasonable price. Instead, as discussed above, contracting officers must exercise business judgment regarding fair and reasonable pricing based on the facts and circumstances of each procurement.⁶ See Comprehensive Health Servs., Inc., *supra*; PJ Helicopters, Inc., *supra*. We therefore conclude that this argument fails to state a valid basis of protest. 4 C.F.R. § 21.1(c)(4), (f).

To the extent the protester argues that it should be "compensated" for lost profits or other monetary damages, this is a matter of contract administration that our Office does not review. Our Office considers bid protest challenges to the award or proposed award of contracts. 31 U.S.C. § 3552. Therefore, we generally do not review matters of contract administration, which are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the Court of Federal Claims. Bid Protest Regulations, 4 C.F.R. § 21.5(a). The few exceptions to this rule include situations where it is alleged that a contract modification improperly exceeds the scope of the contract and therefore should have been the subject of a new procurement; where a protest alleges that the exercise of a contractor's option is contrary to applicable regulations; or where an agency's basis for contract termination is that the contract was improperly awarded. See Sprint Comm'cns Co., L.P., B-271495, April 26, 1996, 96-1 CPD ¶ 211 at 4. None of these exceptions apply here. The protester's request for compensation is a matter our Office will not review, and we therefore dismiss this argument. See 4 C.F.R. § 21.5(a); see also AdaRose Inc.--Protest & Costs, B-299091.2, Jan. 14, 2008, 2008 CPD ¶ 18 at 2 n.1 (GAO will not recommend payment of monetary damages based on lost or anticipated profits).

Next, Service Connected argues that the Forest Service improperly terminated a BPA that was established with the protester in 2015 for similar requirements. Protest at 3. The protester contends that, upon the award of the current BPAs, the agency

⁶ In this regard, an agency's price reasonableness analysis may take into consideration a variety of factors, such as historical prices, commercial pricing, and competitive prices received for the received in response to the solicitation. See FAR § 15.404-1(b). Since this pricing data may change based on time and circumstances, there is no basis to conclude that an agency's reasonableness determination in connection with one procurement is binding on an agency for a different procurement.

terminated the protester's 2015 BPA. The protester argues that this termination was inconsistent with the provisions of the 2015 BPA, which requires 30 days written notice. Id. The termination of a contract or BPA is a generally a matter of contract administration, and the protest does not meet any of the exceptions set forth above for our review of such matters. See 4 C.F.R. § 21.5(a). We therefore dismiss this argument.

The protest is dismissed.

Thomas H. Armstrong
General Counsel