



Decision

Matter of: GC Works, Inc.

File: B-416379; B-416379.2

Date: August 14, 2018

Amy Laderberg O'Sullivan, Esq., Olivia L. Lynch, Esq., and Rosamond Z. Xiang, Esq., Crowell & Moring LLP, for the protester.

M. Craig Hall, Esq., CRH Americas, Inc., for Staker & Parson Companies, an intervenor.
Jack Gilbert, Esq., Department of Transportation, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that award was improper because the awardee was not registered in the System for Award Management (SAM) is denied where record shows that, in fact, the awardee was registered in SAM at the time of award.

DECISION

GC Works, Inc., of Miami, Florida, protests the award of a contract to Staker & Parson Companies, d/b/a Hales Sand & Gravel (S&P), of Ogden, Utah, under invitation for bids (IFB) No. 6982AF18B000005, issued by the Department of Transportation, Federal Highway Administration, for repaving work on the Ephraim Canyon Road in Sandpete County, Utah. GC argues that the agency improperly made award to S&P because the firm was not registered in the System for Award Management (SAM) at the time of award, and because of an alleged defect in the bid bond submitted with S&P's bid, as well as irregularities in the bid itself.

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

The IFB called for fixed-price bids to perform the required work and advised that award would be made to the responsive, responsible bidder submitting the lowest price. IFB at A-4. The record shows that the agency received three bids by the bid opening date of April 17, 2018. S&P submitted the low bid and GC submitted the second-low bid. The agency made award to S&P on May 8 for approximately \$3.8 million.

GC argues that the solicitation required bidders to be registered in the SAM by the date of contract award. GC maintains that the bid submitted by S&P was submitted in the name of “Staker and Parson d/b/a Hales Sand and Graves” and that no firm by that name is registered in SAM. GC therefore argues that award to S&P was improper because the firm was not registered in SAM at the time of award.

We find no merit to this allegation. The record shows that the bid submitted by S&P included the firm’s data universal numbering system (DUNS) number. A search of SAM using that DUNS number performed by the agency demonstrates that S&P had a current registration in SAM dating back to September 2001 that was active through July 17, 2018. Agency Report (AR) exh. 6, at 3. Moreover, one of the addresses included in S&P’s bid also is listed as S&P’s address in SAM.¹ Id. We therefore find no merit to GC’s allegation that S&P was not registered in SAM at the time of award.² See CASS Professional Services Corp., B-415941, B-415941.2, Apr. 27, 2018, 2018 CPD ¶ 163 at 7. In any event, an agency’s waiver of a requirement that firms be registered in SAM at a particular time does not provide a basis for our Office to conclude that a protester has been prejudiced, since there is no reason to suggest that the protester would have changed its bid or proposal had it known that the requirement would be waived by the agency. C.L.R. Development Group, B-409398, Apr. 11, 2014, 2014 CPD ¶ 141 at 7-8; Graves Construction, Inc., B-294032, June 29, 2004, 2004 CPD ¶ 135 at 3.³

GC also argues that the bid bond submitted by S&P was defective, and that an examination of the bid itself reveals irregularities in the name of the bidder as written in

¹ The IFB included a box for a firm to enter its name and address, and a second box for a firm to enter a “remittance address” if that was different from the address identified elsewhere. S&P’s bid included two different addresses, one of which--the remittance address--is the firm’s address in SAM.

² We also note that the record shows that Hales Sand and Gravel, Inc. is a subsidiary of S&P. AR, exh. 7, Dunn & Bradstreet Report for S&P, at 7. Thus, the fact that the firm may also have included the phrase “d/b/a Hales Sand and Gravel” does not provide a basis for us to conclude that S&P was not registered in SAM at the time of award.

³ As a final matter, we note that GC’s protest suggests that it believes that a firm’s failure to register in SAM is a matter of responsiveness (citing Federal Acquisition Regulation (FAR) § 14.301), and that rejection of S&P’s bid should have occurred because it was nonresponsive. However, since registration--or failure to register--in SAM does not affect a firm’s obligation to perform in accordance with the terms of the IFB, it is not a matter of responsiveness, but rather a matter of responsibility. See Veterans Construction of South Carolina, LLC, B-401723.2, Jan. 21, 2010, 2010 CPD ¶ 36 at 3-4.

the bid compared to the actual name of the company.⁴ We dismiss these allegations as untimely.

S&P raised these allegations in its comments responding to the agency report after GC reviewed the S&P bid documents for the first time. However, the record shows that the agency conducted a public bid opening at which all bids submitted could be inspected. See Federal Acquisition Regulation § 14.402-1. The record also shows that GC elected not to attend the bid opening, and as a consequence, did not actually review the S&P bid until it received the agency report. AR, exh. 35, Bid Opening Sign-Up Sheet. Accordingly, the record shows that GC failed to diligently pursue the information upon which these allegations are based. Thomas May Construction Co., B-255683, Mar. 23, 1994, 94-1 CPD ¶ 210 (protest dismissed as untimely where protester elected not to attend public bid opening and instead obtained a copy of the awardee's bid through a Freedom of Information Act request).⁵ We therefore dismiss these aspects of GC's protest as untimely.

Thomas H. Armstrong
General Counsel

⁴ For example, GC notes that the name on the bid does not include an ampersand between the names "Staker" and "Parson."

⁵ The record includes a series of communications between GC and the agency. Because GC did not attend the bid opening or review the S&P bid, this correspondence includes only speculation about whether or not S&P was registered in SAM; about the sufficiency of S&P's bid bond, and about the spelling of the firm's name, among other things. AR, exhs. 11-26. In the last letter sent by GC dated April 24, GC asked the agency for a copy of S&P's bid bond and the standard form 1442 from its bid. Id. The agency replied to this last letter by letter dated April 26, but did not provide GC with a copy of the requested documents. AR, exh. 26.

While the record therefore suggests that GC ultimately attempted to obtain a copy of S&P's bid documents from the agency, there is no requirement that we are aware of for the agency to have provided the requested documents at that time, and GC made no mention of this effort in its protest to our Office. Since GC could have obtained all of the information it was seeking by attending the public bid opening, it was incumbent upon the firm to do so; waiting to review the S&P bid documents after receipt of the agency report amounts to a failure on the part of the protester to diligently pursue the information forming the basis of its protest. Thomas May Construction Co., supra.