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Decision

Matter of: Dehler Manufacturing Company, Inc.

File: B-416601

Date: October 25, 2018

Kristi Morgan Aronica, Esq., Weitz Morgan PLLC, for the protester.
Karl W. Kuhn, Esq., and Garry L. Brewer, Esq., Department of the Army, for the agency.
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General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the exclusion of vendor's quotation due to an expired System for Award Management registration is denied where record shows that the agency's determination was reasonable and consistent with the terms of the solicitation.
2. Protest challenging the agency's issuance of a purchase order is denied where the agency reasonably issued the purchase order to another vendor after the protester was found ineligible for award.

DECISION

Dehler Manufacturing Company, Inc. (Dehler), a small business, located in San Antonio, Texas, protests the issuance of a purchase order to Hi-Tech Bed Systems Corporation (Hi-Tech), under request for quotations (RFQ) No. W912DY-18-T-0089, issued by the Department of the Army, Army Corps of Engineers (Corps) for barracks furniture. The protester argues that the agency improperly determined that it was ineligible for award, and contends that the agency's award to Hi-Tech was unreasonable.

We deny the protest.

BACKGROUND

On February 9, 2018, the Corps issued the RFQ as a small business set-aside, using the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4. The RFQ provided for the issuance of a purchase order for various types of barracks furniture at Fort Irwin, California. RFQ at 2. The RFQ provided that the purchase order would be issued on a lowest-priced, technically acceptable basis. Id.

at 10. As relevant here, the RFQ required vendors to be registered in the System for Award Management (SAM) at the time of award. Id. at 7.

The agency received quotations from several vendors, including Hi-Tech and Dehler, which were both found to be technically acceptable. Agency Report (AR), Tab 2, Contracting Officer's Statement (COS) at 3. Dehler's quotation provided the lowest-price. Id. at 1. On May 9, 2018, the contract specialist sent an e-mail to Dehler, which read, "Please see Attached award for FT Irwin bldg. 864A please sign and return if you have any question please don't hesitate to contact me." AR, Tab 3, Contract Specialist Email, May 9, 2018 (9:18 a.m.). The document attached to the email was a Standard Form (SF) 1449, unsigned by the contracting officer. Id. Dehler signed and returned the SF 1449 to the contract specialist later the same day. AR, Tab 4, Dehler Email, May 9, 2018 (12:17 p.m.).

The next day, Dehler requested that the agency amend the start date. AR, Tab 4, Dehler Email, May 10, 2018 (3:29 p.m.). On May 18, the contract specialist sent Dehler a revised SF 1449 with the amended start date requested by Dehler. AR, Tab 4, Contract Specialist Email, May 18, 2018 (10:14 a.m.). The revised SF 1449 provided to Dehler remained unsigned by the contracting officer. Id. On May 24, Dehler signed and returned the revised SF 1449. AR, Tab 5, Dehler Email, May 24, 2018 (2:06 p.m.). On May 29, Dehler emailed the contract specialist, stating in pertinent part: "I am following up on this award to be sure a copy signed by the contracting officer will be forthcoming so that we can move forward with the project." AR, Tab 5, Dehler Email, May 29, 2018 (5:24 p.m.).

On May 30, Dehler's SAM registration expired. Protest, Exhibit H, SAM Email Notification, May 29, 2018 (11:57 p.m.). On May 31, the contracting officer became aware of Dehler's expired SAM registration, and concluded that he could not issue an order to Dehler due to its expired registration. Contracting Officer Supp. Decl. at 2. Thus, throughout June and early July, the agency communicated with Dehler regarding its attempts to renew its SAM registration. AR, Tab 7, Dehler / Agency Emails; COS at 1-2. During this time, the contracting officer never signed the revised SF 1449, which had been signed by Dehler on May 24.

On July 13, the agency issued a signed purchase order under the RFQ to Hi-Tech for a value of \$303,329.69. AR, Tab 11, Hi-Tech SF 1449, at 1. The agency issued the order to Hi-Tech after it found Dehler ineligible for award because it did not have a valid SAM registration. Contracting Officer Supp. Decl. at 2. On July 20, Dehler filed this protest with our Office.

DISCUSSION

Dehler argues that the agency improperly determined that it was ineligible for award, and contends that the agency's award to Hi-Tech was unreasonable. Dehler argues

that the agency's actions were improper because it possessed an active SAM registration at the time of award.¹ In this regard, the protester asserts that the agency issued the order to Dehler on May 9, when Dehler signed the SF 1449 sent to it by the contract specialist. The protester argues that the agency's order to Hi-Tech was improper because the order was issued under the same RFQ as Dehler's May 9 order. Dehler contends that the agency constructively terminated Dehler's order when the agency issued an order to Hi-Tech under the same RFQ.

In response, the agency argues that Dehler was never issued an order under the RFQ because the contracting officer never signed the SF 1449. The agency further argues that it reasonably determined Dehler to be ineligible for award based upon its expired SAM registration, and therefore properly made award to Hi-Tech.

For the reasons set forth below, we find the agency's actions unobjectionable.

The protester contends that a legally binding contract/order was formed on May 9, because, in the protester's view, Dehler's signing of the SF 1449 constituted acceptance of the government's offer. Dehler argues that under an RFQ, a contract/order is formed when the vendor accepts the government's offer. While we agree with the protester that an agency's issuance of a purchase order constitutes an offer, which a vendor may choose to accept, the record here does not demonstrate that the agency issued a purchase order to Dehler.

An RFQ, unlike a request for proposals (or an invitation for bids), does not seek offers that can be accepted by the government to form a contract. Computer Assocs. Int'l, Inc., B-292077.3 et al., Jan. 22, 2004, 2004 CPD ¶ 163 at 5 (quotations submitted in response to an RFQ are not offers that may be accepted to form a binding contract). Rather, in the context of an RFQ, it is the government's purchase order which represents an offer that the vendor may accept through performance or by a formal acceptance document. Id.; FAR § 13.004(a), (b).

On the record before us, we find that the protester has failed to demonstrate that the agency issued a purchase order (i.e., made "award") to Dehler. In this regard, the FAR clearly states that: "Contracts may be entered into and signed on behalf of the Government only by contracting officers." FAR § 1.601(a); see also FAR § 4.101 ("Only contracting officer shall sign contracts on behalf of the United States."). Absent from the record here is any evidence that an individual with authority to bind the government issued an offer to Dehler. Rather, the SF 1449 transmitted to Dehler did not bear the signature of a contracting officer. AR, Tab 3 at 1. In addition, the SF 1449 was provided to Dehler for signature by a contract specialist who neither possessed authority himself nor was delegated authority to bind the government with respect to the

¹ The protester does not dispute that the RFQ required offerors to be registered in SAM at the time of award. Comments at 2.

RFQ by the contracting officer.² Contract Specialist Declaration at 1; Contracting Officer Supp. Decl. at 1. Consequently, because we cannot find that Dehler was issued a purchase order under the RFQ, Dehler's signing of the SF 1449 on May 9 or May 24, did not constitute acceptance. Accordingly, we find that the Dehler was not awarded an order as it alleges.³

We next address whether the agency properly found Dehler to be ineligible for award after its SAM registration expired.

Where, as here, an agency conducts a competition under FAR subpart 8.4, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. CMI Mgmt., Inc., B-404645, Mar. 2, 2011, 2011 CPD ¶ 66 at 4. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Maybank Indus., LLC, B-403327, B-403327.2, Oct. 21, 2010, 2010 CPD ¶ 249 at 5.

As stated above, Dehler acknowledges that the vendors were required to be registered in SAM at the time of award in order to be eligible for award. Further, Dehler does not dispute the agency's assertion that its SAM registration expired on May 30, and was not re-activated until July 26. As a result, we find no basis to conclude that the agency improperly found Dehler ineligible for award. On the date Dehler's SAM registration expired, May 30, the agency had yet to issue a signed purchase order, and despite giving Dehler an opportunity to renew its registration, the protester was not able to renew its registration by the time the agency issued the purchase order to Hi-Tech on

² The protester argues that the contract specialist who transmitted the SF 1449 to Dehler possessed implied actual authority. However, the protester cites no precedent to support the contention that a contract specialist has implied actual authority to issue a binding purchase order.

³ While the record here does not demonstrate that the agency issued a purchase order to Dehler, the agency's practice of providing vendors with a draft order, for their review and signature, prior to issuing the signed purchase order seemingly alters the RFQ award process. The agency may wish to review its procedures and consider the possible implications of this practice for future procurements.

July 13. Because the agency reasonably determined that Dehler was not eligible for award, we further find that the agency's issuance of a purchase order to Hi-Tech was reasonable.

The protest is denied.⁴

Thomas H. Armstrong
General Counsel

⁴ To the extent the protester argues that it should be compensated for performance damages resulting from the agency's constructive termination of its contract, this is a matter of contract administration that our Office does not review. 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 (“[T]here is no legal basis that would permit recovery of anticipated profits or similar monetary damages, even if a firm submitting a protest has been wrongfully denied a contract.”).