



Decision

Matter of: Illustrious Consultants

File: B-416914

Date: December 28, 2018

Kahlia Meeks for the protester.
Austin Fulk, Esq., Office of Personnel Management, for the agency.
Kenneth Kilgour, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of awardee's quotation is denied where the evaluation was reasonable and consistent with the solicitation's requirements, and where it was not clear from the solicitation that the protester's more restrictive interpretation of the solicitation was intended by the agency.

DECISION

Illustrious Consultants (IC), of Atlanta, Georgia, protests the issuance of a purchase order (PO) to Business Operational Concepts, LLC (BOC), of Ellicott City, Maryland, under request for quotations (RFQ) No. 243618-18-Q-0047, issued by the Office of Personnel Management (OPM) for Enghouse software licenses. The protester challenges the agency's evaluation of the awardee's quotation.

We deny the protest.

BACKGROUND

The RFQ, set aside for women-owned small businesses (WOSB) and issued in accordance with Federal Acquisition Regulation (FAR) parts 12 (Acquisition of Commercial Items) and 13.5 (Simplified Procedures for Certain Commercial Items), contemplated the issuance of a fixed-price PO. Protest, Exh. 4, RFQ at 2. Award would be made to the WOSB "authorized reseller" submitting the lowest-priced technically-acceptable quotation. Id. A technically acceptable quotation was defined as one that "demonstrates an ability to meet the specifications of the [bill of materials (BOM)]." Id. The agency would evaluate the lowest-priced quotation for technical

acceptability. Id. at 3. The agency would only evaluate other quotations for technical acceptability if the lowest-priced quotation was found unacceptable. See id.

The protester and the awardee, both of whom have supplied software licenses to OPM, submitted the only two quotations. The protester is the current incumbent. Agency Report (AR), Memorandum of Law (MOL) at 1. BOC submitted the lowest-priced quotation. The contract specialist emailed Enghouse Interactive with a technical question regarding the licenses OPM would be receiving. Enghouse Interactive advised the agency that BOC was not an authorized reseller. Id. at 3. The agency, in turn, advised BOC that Enghouse was “unaware of any quotes that were sent to your business from their office.” Email from Agency to Awardee, Sept. 14, 2018. BOC notified the agency that it received the quote through Advanced Communications Systems (ACS), which is an authorized reseller of Enghouse software licenses, and that BOC is an “authorized sales agent” for ACS. Email from BOC to Agency, Sept. 14. The agency then contacted Enghouse, inquiring as to the status of ACS as an authorized Enghouse reseller. Email from Agency to Enghouse, Sept. 17. Enghouse responded that Advanced Communication was an Enghouse authorized reseller. Email from Enghouse to Agency, Sept. 18. The agency issued the PO to BOC.

IC filed an agency-level protest of the issuance of the PO, asserting that BOC did not have a relationship with Enghouse. Agency-Level Protest, Sept. 25, at 2. The agency denied the protest, disagreeing with the protester that BOC was ineligible for award for failing to have a direct relationship with Enghouse. Letter from Agency to IC, Sept. 28. The agency argued that the solicitation did not require the WOSB awardee to have a “direct relationship with Enghouse,” because the RFQ did not “preclude or prevent” a WOSB from partnering with another entity to meet the solicitation’s requirements. Id.

This protest followed.

DISCUSSION

IC asserts that BOC is ineligible for award where BOC is not an Enghouse authorized reseller, notwithstanding BOC’s relationship with ACS. The protester argues that the solicitation does not permit a vendor to satisfy the terms of the RFQ through an agency relationship with an authorized reseller.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that reasonably gives effect to all its provisions. McLaurin Gen. Maint., Inc., B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 10. We will not read a provision restrictively where it is not clear from the solicitation that such a restrictive interpretation was intended by the agency. Red River Comput. Co., Inc.; MIS Scis. Corp., B-414183.8 et al., Dec. 22, 2017, 2018 CPD ¶ 7 at 9-10.

When a protester asserts a more restrictive solicitation interpretation than an agency, this Office considers whether the protester’s interpretation of the requirement would

eliminate competition altogether, leaving only the protester eligible for award. See MAR Inc.--Recon., B-242465.2, Sept. 30, 1991, 91-2 CPD ¶ 307 at 3-4. In such a circumstance, we may assume that it was not the agency's intent to limit the competition to a single firm--the incumbent--and may decline to adopt the protester's restrictive reading of the solicitation. See id. Here, the agency set aside the requirement for WOSB concerns with the expectation that at least two--IC and BOC--would compete.¹ See MOL at 1-2. BOC, which performed this requirement prior to IC becoming the incumbent, is eligible to compete under the agency's less restrictive interpretation of the RFQ. In our view, the record does not support the claim that the agency intended the more restrictive interpretation advanced by the protester;² to the contrary, the record supports a finding that the agency's intent was to provide for a competition that included at least two firms, one of which was the awardee. We thus find no merit to the allegation that the agency unreasonably evaluated the awardee's quotation as technically acceptable.³

Even assuming that IC's interpretation of the solicitation is reasonable, however, the protester has failed to establish that it was prejudiced by the alleged waiver of the solicitation requirement that the contractor itself be an authorized reseller. An agency may waive compliance with a material solicitation requirement in awarding a contract only if the award will meet the agency's actual needs without prejudice to other firms. Glem Gas S.p.A., B-414179, Feb. 23, 2017, 2017 CPD ¶ 60 at 4. Competitive prejudice from such a waiver exists only where the requirement was not similarly waived for the protester, or where the protester would be able to alter its quotation to its competitive advantage if given the opportunity to respond to the relaxed term. Id. In cases where the protester argues that an agency waived a certain requirement, prejudice does not mean that, had the agency failed to waive the requirement, the awardee would have been unsuccessful. Rather, the pertinent question is whether the protester would have

¹ The protester argues that, "[l]egally, IC is entitled to award" as a WOSB, Protest at 5, but nothing in the record supports the protester's assumption that the requirement would have been set aside for WOSB if BOC were not eligible for award.

² An agency may explicitly require a vendor to establish that it is an authorized reseller. See Veterans Healthcare Supply Sols., Inc., B-410763.6, Jan. 22, 2015, 2015 CPD ¶ 52 at 3. The RFQ here contains no such requirement.

³ The protester also asserts that, even if BOC could fulfill the solicitation's requirements through an agency agreement with ACS, ACS was not an active authorized reseller at the time that quotations were submitted. Comments at 5. An agency may reasonably rely on an awardee's representation. See ARKRAY USA, Inc., B-408981.4, Mar. 5, 2014, 2014 CPD ¶ 90 at 9 n.13 (noting that an agency may reasonably rely on a firm's representation). As discussed above, OPM did more than merely rely on the awardee's representation; the agency asked Enghouse to confirm that ACS was an Enghouse authorized reseller, and Enghouse confirmed its relationship with ACS. We have no basis to question the reasonableness of the agency's reliance on Enghouse's substantiation of the awardee's representation.

submitted a different quotation that would have had a reasonable possibility of being selected for award had it known that the requirement would be waived. Id.

IC is an Enghouse authorized reseller whose quotation was thus found technically acceptable. In this lowest-priced technically acceptable competition, IC could only have improved its competitive advantage by offering a lower price. IC has not asserted that, had it known of the agency's interpretation of the solicitation, the protester's price would have been more competitive. In short, competitive prejudice is an essential element of a viable protest, and we will not sustain a protest challenging the waiver of a solicitation requirement where, as here, there is no basis for finding competitive prejudice to the protester. Id.

The protest is denied.

Thomas H. Armstrong
General Counsel