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Decision

Matter of: Global Accounting, LLC

File: B-417822.2; B-417822.3

Date: November 27, 2019

Eric S. Montalvo, Esq., and Jennifer F. Hooshmand, Esq., Federal Practice Group, for the protester.

Marie Cochran, Esq., General Services Administration; and Alison M. Amann, Esq., Small Business Administration, for the agencies.

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DIGEST

1. Protest that agency misevaluated the protester's proposal as unacceptable is denied where the protester failed to submit a representation that it was not aware of any facts that created any actual or potential organizational conflict of interest and the solicitation specifically required that representation.
 2. Protest that agency was required to request clarifications and thereby allow the protester to submit a clarification that included a missing representation about facts creating an organizational conflict of interest is denied where the required representation was substantive and could not be remedied through clarifications.
 3. Protest that agency was required to refer the protester to the Small Business Administration for consideration of a certificate of competency is denied where the protester's part I proposal was properly rejected as technically unacceptable, and thus the rejection was not a nonresponsibility determination.
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DECISION

Global Accounting, LLC, of Washington, D.C., a small business, protests the rejection of its Part I proposal, and its resulting elimination from the competition, under request for proposals (RFP) No. 47QFCA19R0033, issued by the General Services Administration (GSA), Federal Acquisition Service, for commercial-item program management and acquisition support services for GSA's Federal Systems Integration and Management Center (FEDSIM), in Washington, D.C. Global argues that the GSA improperly rejected its part I proposal, and that the basis for rejecting the proposal was

a negative responsibility determination that should have been referred to the Small Business Administration (SBA) under its certificate of competency procedures.

We deny the protest.

BACKGROUND

The RFP, issued on July 16, 2019, sought proposals to perform “[c]omprehensive [o]perations [m]anagement, [p]rocurement, and [a]dministrative [s]upport [s]ervices (COMPASS),” and identified the procurement as being “[c]onducted under Federal Acquisition Regulation (FAR) [part] 12 utilizing FAR [part] 15 procedures.” Agency Report (AR) Tab 1, RFP, at 1. The RFP was set aside for service-disabled veteran-owned small businesses (SDVOSB). Id.

The RFP included an organizational conflict of interest (OCI) requirement that specified that the awardee, its subcontractors, consultants, and teaming partners would be ineligible to propose on any procurement issued by FEDSIM¹ for the duration of the COMPASS contract, and that “[t]here is no mitigation strategy to resolve this organizational conflict of interest.” Id. at H-5 to H-6. Additionally, the contractor was required to immediately disclose any past, current, anticipated work that “creates or represents an actual or potential OCI.” Id. at H-6. The RFP also instructed that “[t]he contractor is required to complete and sign an OCI Statement (Section J, Attachment K),” submit a mitigation plan for any OCI that the contractor believed could be mitigated, and supply any additional requested information about the mitigation of any OCI. Id.

The RFP directed prospective offerors to submit proposals in four separate parts. RFP at L-2. The part I proposal was required to be submitted first, and was described as the offeror’s “[p]reliminary [p]rice [p]roposal.”² Id. It was to consist of a statement that the firm intended to submit a proposal, a statement of the firm’s SDVOSB status, and an acknowledgement of the agency’s policy on OCIs. Id. at L-3 to L-4. As relevant to the protest issues, the offeror was instructed to submit a completed version of “Attachment P – Part I Price Proposal” for itself, and “Attachment K, Organizational Conflict of Interest (OCI) Statement” for itself and each subcontractor, consultant, and teaming partner. Id.; AR, Tab 5, RFP attach. K, at 1; AR, Tab 6, RFP attach. P, at 1.

The RFP provided two versions of the attachment K form. One version stated that it was an example of a required OCI statement that the offeror itself had to submit. The other was an example of the statement that a subcontractor, consultant, or teaming

¹ The RFP identified as an exception “procurements issued on behalf of the FEDSIM PMO [program management office].” Id.

² The price proposal (part II), technical proposal (part III), and materials for oral presentation (part IV) would be due separately after the agency had reviewed the part I proposals. Id.

partner had to submit. Both versions stated that the firm had reviewed the requirements of the RFP and of Federal Acquisition Regulation subpart 9.5, it represented that the firm “is not aware of any facts which create any actual or potential OCI,” and it affirmed that the firm would immediately disclose any actual or potential OCI during performance. AR, Tab 5, RFP attach. K, at 2-3.

The RFP also provided one version of the attachment P form, which stated first that the firm was affirming its intent to propose as a prime contractor. After that statement, the form had two sections. The first section of attachment P stated that the firm was an eligible SDVOSB under the applicable size standard, and the second section stated that the firm agreed that it, and any subcontractors, consultants, or teaming partners “shall be ineligible from proposing . . . on any procurement issued by FEDSIM” and the firm recognized that it had to “disclose any circumstances that may create an actual or apparent conflict of interest” by reporting it immediately to the contracting officer. AR, Tab 6, RFP attach. P, at 2.

GSA received proposals from 17 firms, including Global. Global’s proposal contained two attachment K forms and one attachment P form, which were submitted as two separate electronic files, both labeled as “Attachment K” (one file for Global and one for its subcontractor). AR Tab 12, Transmittal email from Global to Contracting Officer, July 21, 2019, at 1. There was no attachment K form for Global; rather, the first electronic file contained two attachment K forms signed by Global’s subcontractor,³ while the second electronic file labeled as being “Attachment K” was instead a completed attachment P form that Global has completed and signed. Protest at 2 n.1; AR Tab 5, Subcontractor’s Attachment K Form; AR Tab 6, Global’s Attachment P Form.

Upon reviewing Global’s part I proposal, the GSA contracting officer determined that Global had not submitted an attachment K form for itself, and that the agency would reject the proposal as unacceptable because the failure to submit the form represented a material omission. AR Memorandum of Law (MOL) at 5-6. The contracting officer explains that by submitting a proposal that did not conform to the RFP requirement for a completed Attachment K form for the offeror, Global’s Part I proposal was nonresponsive, which disqualified it from continuing in the competition.⁴ Contracting Officer’s Statement (COS) at 2.

³ The subcontractor’s submission contained both the offeror form and the subcontractor form from the examples provided in the RFP. As a result, in the former, the subcontractor listed itself as the firm “responding to [the] solicitation,” and in the latter, the subcontractor confusingly identified itself as a subcontractor to itself; specifically, the firm stated that “[subcontractor’s name] is participating as a subcontractor to [subcontractor’s name].” AR Tab 5, Subcontractor’s Attachment K Form, at 2-3.

⁴ The contracting officer explains that three other offerors were also disqualified by their failures to submit the required OCI statements, and that ultimately three firms submitted proposal parts II, III, and IV. COS at 2.

The contracting officer notified Global by email of the elimination of its proposal from the competition on August 27. Following a debriefing, Global filed this protest.

DISCUSSION

Global argues that the elimination of its proposal was unreasonable because the statements in its Attachment P form effectively captured the substance of the Attachment K form, and that the GSA should have allowed Global to submit an Attachment K form as a clarification. Global and the SBA both also argue that even if the contracting officer's determination to eliminate the firm's proposal were correct, GSA should then have referred the matter to the SBA for a determination under its certificate of competency procedures.

The GSA argues that the RFP clearly stated the requirement for offerors to provide both Attachments K and P form for themselves. MOL at 6. GSA argues that 12 of the offerors did submit the Attachment K and Attachment P forms correctly in their part I preliminary price proposals, thereby demonstrating that the RFP instructions were sufficiently clear. Id. at 5. The GSA also contends that the missing Attachment K form was substantive, and therefore, if the agency had invited Global to submit it late, that action would have amounted to discussions, which the agency was not required to conduct. Id. at 8-9. GSA also argues that the omission of the Attachment K form for Global was essential to the agency making a judgment about whether the firm's participation presented risks of an OCI, which is not a responsibility issue and therefore SBA lacks jurisdiction to consider the issue under its certificate of competency process. Id. at 9-10.

The evaluation of proposals is a matter within the discretion of the procuring agency. FreeAlliance.com, LLC, B-414531, June 19, 2017, 2017 CPD ¶ 191 at 3. In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Id. At the same time, it is an offeror's responsibility to submit an adequately written proposal that establishes the technical acceptability of its proposed approach, and allows for a meaningful review by the agency. Id. An offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately-written proposal. Navarre Corp., B-414505.6, July 13, 2018, 2018 CPD ¶ 242 at 4; see also EA Eng'g, Sci., & Tech., Inc., B-417361, B-417361.2, June 13, 2019, 2019 CPD ¶ 218 at 7 (agency reasonably assessed deficiency where solicitation required, and protester's quotation failed to provide, OCI information regarding subcontractor).

Our review of the record supports the contracting officer's conclusion that Global's part I proposal failed to include a representation required in the attachment K form about the Global's own awareness of any facts that could present an OCI. Although Global argues that the information in the attachment P form should have been sufficient, our review of the record confirms that the contracting officer reasonably treated the representations as distinct. The attachment P form committed Global to disclose any

circumstances that may create an actual or apparent conflict of interest, but it did not make a representation about whether Global was currently aware of facts that could cause an actual or potential OCI. We also disagree with Global's suggestion that the RFP requirement for the firm to submit an attachment K representation for itself was not sufficiently clear. In fact, as noted above, the RFP provided two versions of the attachment K form: one that was identified as applying to offeror, and the other that was identified as being applicable to a subcontractor, consultant, or teaming partner. Indeed, the two electronic attachments to Global's proposal were labeled as attachment K forms--one for Global and one for the subcontractor--which undermines Global's claim that it did not regard the RFP as requiring Global itself to submit an attachment K form for itself. We see no basis on which a reasonable offeror could conclude that the RFP did not require the offeror to submit an attachment K form for itself, or an equivalent representation.⁵ GSA's decision to reject Global's part I proposal as unacceptable was reasonable because the firm failed to include the form or otherwise provide the OCI representation.

Both Global and the SBA argue that even if the contracting officer could reasonably find that the omission of the attachment K OCI representation made Global's proposal unacceptable, that determination was not a technical evaluation but rather a negative responsibility determination. As such, they argue, GSA was required to refer the firm to the SBA to determine whether to issue a certificate of competency (COC). Protester's Comments at 2-3; SBA Response to AR at 4-5; see generally FAR § 19.601.

Global also argues that the missing representation was a minor clerical error, and that GSA should have communicated in the form of a clarification to indicate that its proposal lacked the representation, and should then have allowed Global to correct its omission as a clarification. Supp. Protest at 3-4; Protester's Comments at 3-4. GSA counters that the omission of the attachment K form was not the type of clerical error that could be addressed through clarifications because attachment K constituted substantive proposal information that would have required GSA to initiate discussions with all offerors, which the agency was not required to do. MOL at 6-7.

We disagree with Global and the SBA that the attachment K form should have been treated as a responsibility matter under the RFP, and likewise disagree that the representation could either be submitted later as a clarification or that the omission should be treated as a negative responsibility determination that had to be referred to the SBA. We have previously expressed the view that a contracting officer's determination of whether an OCI makes a contractor ineligible for award is "analogous to a responsibility determination," and the issue is "more closely related to matters of

⁵ Global also argues that the attachment K forms were labeled as samples, thereby implying that it would suffice for an offeror to make a functionally equivalent representation in another way. Even so, we do not agree with Global's conclusion that the attachment P form made an OCI representation that was functionally equivalent to the language in the attachment K form.

responsibility than evaluation matters,” so a contracting officer could appropriately seek information from the offeror without initiating discussions. Overlook Sys. Techs., Inc., B-298099.4, B-298099.5, Nov. 28, 2006, 2006 CPD ¶ 185 at 20-21; cf. Orkand Corp.; Falcon Research & Dev. Co., B-209662.2, B-209662.3, Apr. 4, 1983, 83-1 CPD ¶ 349 at 5 (discussions were necessary to allow apparent OCI to be addressed before considering whether COC referral was required). However, under the RFP here, the requirement to submit an attachment K OCI representation from the offeror itself was a substantive RFP requirement, so its omission amounted to a failure to provide information essential to the agency's part I proposal evaluation. Where a vendor fails to affirmatively demonstrate the merits of its quotation, it bears the risk that its proposal will be rejected as technically unacceptable on that basis. Security Mgmt. & Integration, Inc., B-409463, Apr. 3, 2014, 2014 CPD ¶ 120 at 4.

As explained above, the requirement that the offeror submit an attachment K form OCI representation was substantive, so the contracting officer was not obligated to request the missing OCI form from the offerors (including Global) that had omitted it; to do so would have initiated discussions, and we will not impose a requirement to open discussions before eliminating an unacceptable proposal from further consideration. Telestar Corp., B-275855, Apr. 4, 1997, 97-1 CPD ¶ 150 at 5-6. As a result, and notwithstanding the analogous nature and close relation to responsibility of OCI information, we do not think that the contracting officer was required to refer Global (or the other similarly-affected offerors) to the SBA for consideration of a certificate of competency.

The protest is denied.

Thomas H. Armstrong
General Counsel