



Decision

Matter of: Phoenix Environmental Design, Inc.

File: B-418473; B-418473.2

Date: May 20, 2020

C. Chad Gill, for the protester.

Sheryl L. Rakestraw, Esq., and Brian A. Quint, Esq., Department of the Interior, for the agency.

Lois Hanshaw, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the awardee's proposal was unacceptable because the awardee's registration in the System for Award Management was inaccurate is denied where there is no basis to conclude that the protester was prejudiced by the agency's alleged waiver of the registration requirements.

DECISION

Phoenix Environmental Design Inc., a service-disabled veteran-owned small business of West Richland, Washington, protests the award of a contract to Alligare LLC, of Opelika, Alabama, on a sole-source basis, under solicitation No. DOIAFBO200034, issued by the Department of the Interior, for distribution of Magnacide H, an aquatic herbicide. Phoenix contends that award to Alligare is improper because its System for Award Management (SAM) registration contains incorrect information.

We deny the protest.

BACKGROUND

On January 2, 2020, the agency issued a sources sought notice seeking responses from qualified vendors authorized to distribute Magnacide H for canal and irrigation

application.¹ Agency Report (AR), Tab 10, Sources Sought Notice at 1. On February 12, the agency executed a justification and approval (J&A) that concluded that Alligare was the only responsible source capable of satisfying the agency's requirements. AR, Tab 17, J&A at 1. The agency also checked Alligare's Federal Acquisition Regulation (FAR)/Defense Federal Acquisition Supplement (DFARS) Report in the SAM and verified that Alligare identified its immediate and highest-level owner pursuant to FAR clause 52.204-17, Ownership or Control of Offeror. COS at 9; AR, Tab 18, FAR/DFARS Reports at 9-10.

The next day, on February 13, the agency issued an amendment changing the sources sought notice to a sole-source synopsis and inviting qualified vendors that could show authorization to distribute Magnacide H to respond by February 20. AR, Tab 12, amend. 2 at 1. On February 14, Phoenix protested to our Office.²

DISCUSSION

As one of the required representations and certifications in the SAM, FAR clause 52.204-17, Ownership or Control of Offeror, requires an offeror to identify in the SAM whether it has an immediate owner, which is defined as "an entity, other than the offeror, that has direct control of the offeror." FAR clause 52.204-17(a), (b). The clause further requires that if the offeror's immediate owner is owned or controlled by another entity, the offeror must identify the highest-level owner, which is defined as "the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror." *Id.* at (a), (d).

Phoenix's sole allegation is that Alligare lacks a valid SAM registration because it failed to accurately identify its immediate and highest-level owners in its SAM registration as required by FAR clause 52.204-17. Protest at 10. Based on this assertion, Phoenix argues that the agency should cancel the sole-source award because Alligare has not complied with the requirements of this clause. *Id.*

In response, the agency asserts that it investigated Phoenix's allegations, and requested and received from Alligare information verifying that its SAM registration accurately identified its immediate and highest-level owners. Memorandum of Law at 2 n.1; AR, Tab 19, Emails from Alligare to Agency, Feb. 20, 2020. As explained below,

¹ The agency identifies the issuance date of the sources sought notice as December 23, 2019. Contracting Officer's Statement (COS) at 1. The actual issuance date has no effect on the outcome of our decision.

² Award had not been made when the protest was filed. On March 9, the agency notified our Office that pursuant to FAR 33.104(b)(1) and (c)(2)(ii), it was awarding the contract and authorizing contract performance because urgent and compelling circumstances significantly affecting the interests of the United States would not permit the agency to wait for GAO's decision. Determination and Findings, Mar. 11, 2020, at 1, 10.

even if Alligare's SAM registration is inaccurate or otherwise not in accordance with the requirements of the FAR, Phoenix has failed to show that it was competitively prejudiced by the agency's alleged waiver of the requirement for a valid SAM registration.

Competitive prejudice is an essential element of any viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper. *Interfor US, Inc.*, B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7. With respect to allegations that an offeror's SAM registration is inaccurate or incomplete, our Office has generally recognized that minor informalities related to SAM (or its predecessor systems) registration generally do not undermine the validity of the award and are waivable by the agency without prejudice to other offerors. *Cyber Protection Techs., LLC*, B-416297.2, B-416297.3, July 30, 2018, 2018 CPD ¶ 270 at 5 *citing C.L.R. Dev. Grp.*, B-409398, Apr. 11, 2014, 2014 CPD ¶ 141 at 7. We have found no prejudicial error in such cases largely because an awardee's registration status does not implicate the terms of its proposal, and there is nothing to suggest that another offeror would have altered its proposal to its competitive advantage in response to a relaxed SAM registration requirement. *C.L.R. Dev. Grp.*, *supra*; *Graves Constr., Inc.*, B-294032, June 29, 2004, 2004 CPD ¶ 135 at 3.

Here, even accepting Phoenix's allegations that Alligare's SAM registration was not in compliance with applicable FAR provisions or otherwise was inaccurate, the protester has not established that it was competitively prejudiced by the agency's alleged waiver of the SAM registration requirement. It has not, for example, demonstrated that Alligare's SAM registration provided Alligare with any competitive advantage, or explained how Phoenix would have amended its proposal had it known that the agency would not strictly enforce the SAM registration requirements. Accordingly, we find no basis on which to sustain the protest.³

The protest is denied.

Thomas H. Armstrong
General Counsel

³ For the first time in its comments, Phoenix alleges that Alligare's failure to accurately identify its immediate and highest-level owners in the SAM registration raises questions regarding Alligare's identity. See Comments at 8, 12. Under our Bid Protest Regulations, protests must be filed no later than 10 days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Here, the record shows the facts necessary to raise this protest ground, *i.e.*, the identity of Alligare and its immediate and highest-level owners, were known to Phoenix when it filed its initial protest. Because the protester waited until its comments to raise this new argument, this assertion is untimely and will not be considered further. 4 C.F.R. § 21.2(a)(2); *XL Assocs., Inc., d/b/a/XLA*, B-417426.3, Jan. 16, 2020, 2020 CPD ¶ 33 at 13 n.12.