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Decision

Matter of: The Severson Group, LLC

File: B-418673.2; B-418673.3; B-418673.4

Date: August 17, 2020

Matthew E. Feinberg, Esq., Timothy F. Valley, Esq., and Samuel S. Finnerty, Esq., Piliro Mazza PLLC, for the protester.

Daniel F. Edwards, Esq., Frost, Brown, Todd, LLC, for the State of Hawaii, Department of Human Services, Division of Vocational Rehabilitation, Ho'opono Services for the Blind, the intervenor.

Richard W. Carlile, Esq., and Melissa Martin, Esq., Department of the Navy, for the agency.

Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In taking corrective action, agency reasonably amended solicitation issued pursuant to the Randolph-Sheppard Act to clarify that the agency will provide priority for the award of the contract to a State licensing agency (SLA) if the SLA submits a quotation that is in the competitive range.

DECISION

The Severson Group, LLC (Severson), of San Marcos, California, an 8(a) small business concern, protests the corrective action taken by the Department of the Navy, Naval Supply Systems Command, in response to a prior protest filed by Severson with respect to request for quotations (RFQ) No. N0060420Q4005, for mess attendant services. The protester contends that the agency's corrective action of amending the solicitation to clarify the evaluation procedures is unreasonable.

We deny the protest.

BACKGROUND

The RFQ, issued on November 27, 2019, solicited proposals from State licensing agencies (SLA) under the Randolph-Sheppard Act (20 U.S.C. § 107 *et. seq.*), and 8(a) small business concerns. Agency Report (AR), Exh. 8, RFQ at 1. The Randolph-

Sheppard Act (RSA) has the stated purpose of “providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting.” 20 U.S.C. § 107(a). The RSA directs the Secretary of Education to designate SLAs, which are responsible for training and licensing blind persons. *Id.* § 107a(a)(5). The RSA also establishes a priority for blind persons, represented by SLAs under the terms of the RSA, in the award of contracts for, among other things, the operation of vending facilities, including cafeterias, on federal property. *Id.* §§ 107(b), 107e(7). Accordingly, the implementing regulations of the Department of Education provide that federal agencies requiring cafeteria services must invite SLAs to respond to a solicitation for such services. 34 C.F.R. § 395.33(b). If a designated SLA submits an offer found to be within the competitive range for the acquisition, the agency will enter into negotiations solely with the SLA, in an effort to obtain the services at a reasonable cost. *Id.* § 395.33(a), (b).

The solicitation notified vendors that the government intended to award the contract to the responsible vendor whose quotation offered the best value to the government, considering the following factors: technical capability, past performance, and price. RFQ at 1, 3, 9. However, the solicitation also provided that if the SLA submitted a technically acceptable quotation that was fair and reasonably priced, it would be deemed the presumptive awardee of the contract in accordance with the RSA, conditioned on resolution of questions regarding the SLA’s technical volume; matters of responsibility; and the submission of a final price deemed to be the best value to the government. *Id.* at 8. If the agency could not resolve such matters to ensure that it obtains the best value, the SLA would be removed from the competition and the agency would proceed with the evaluation of other quotations. *Id.*

Following the submission of quotations, the agency evaluated and awarded the contract to the State of Hawaii, Department of Human Services, Division of Vocational Rehabilitation, the SLA, on behalf of Ho’opono Services for the Blind. Contracting Officer’s Statement (COS) at 1-2. Severson protested the award to the SLA with our Office, asserting that the agency unreasonably concluded that Ho’opono’s price was fair and reasonable, and that the agency did not determine if the SLA’s quotation represented the best value to the government. Protest at 6-7. In response, the agency notified our Office that it would take corrective action consisting of: (1) cancelling the award to Ho’opono, (2) amending the solicitation to “align the RFQ to the competitive range standard of the [RSA] regulation,” and (3) receiving and evaluating revised quotations. AR, Ex. 3, Notice of Corrective Action. The agency’s corrective action rendered the protest academic, and we dismissed Severson’s protest. *The Severson Group, LLC*, B-418673, May 21, 2020 (unpublished decision).

On May 26, to implement its corrective action, the agency issued an amendment to the solicitation which provided as follows:

A single award will be made on the basis of the lowest evaluated price of quotes (with the exception of where priority is given to the SLA) meeting

the acceptability standards for non-cost factors. The Government intends to award on initial quotes but reserves the right to conduct discussions.

Competition is limited to 8(a) small businesses and the State Licensing [Agency] (SLA) under the Randolph Sheppard Act (RSA), with the intent to follow competitive procedures permitted under the RSA; pursuant to 20 USC 107 and 34 CFR 395.33, a RSA State Licensing Agency (SLA) that submits an offer will be granted a priority in the source selection. If an SLA submits an offer that is in the competitive range, the Contracting Officer may initiate discussions solely with the SLA for the purpose of facilitating an award to the SLA without further consideration of the other quotes. The SLA may be included in the competitive range even if it is not the lowest priced.

AR, Exh. 9, RFQ amend. 3 at 8. This protest followed.

DISCUSSION

Severson protests the agency's decision to amend the solicitation to provide a priority for the award of the contract to the SLA as long as the SLA is included in the competitive range.¹ We have considered all the protester's arguments and find that none provide a basis to sustain a protest of the agency's decision to amend the solicitation's basis for award. We discuss several of the protester's arguments below.

Severson argues that an agency is required to propose corrective action that is appropriate to remedy the concern that caused the agency to take corrective action. Protest at 9-11. Severson explains that in its initial protest (B-418673), it challenged the evaluation of Ho'opono's quotation and the agency's failure to make a proper best-value determination, not the evaluation criteria set forth in the solicitation. *Id.* at 10. Severson therefore argues that it was improper for the agency, in taking corrective action, to amend the basis for award.² *Id.*

¹ In protesting the agency's corrective action, Severson also protested that the RSA is not applicable to this procurement. Protest at 12-14; Supp. Protest at 3. We dismissed that basis of protest as untimely. Electronic Protest Docketing System No. 20. Here, the solicitation as issued made it clear that the agency was conducting the procurement in accordance with the RSA, RFQ at 1, 8, and the protester did not challenge the terms of the solicitation prior to the closing date for the receipt of quotations. 4 C.F.R. § 21.2(a)(1).

² Severson also protests that the agency's contention that it took corrective action to cure a mistake in the solicitation's evaluation criteria is not supported by contemporaneous documentation in the agency report because there are no notes, emails, communications, or analysis worksheets from the time the agency decided to take corrective action. Comments at 3-5. We disagree. The agency's notice of corrective action in response to Severson's first protest (B-418673) specifically states
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As a general rule, agencies have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure fair and impartial competition. *MSC Indus. Direct Co., Inc.*, B-411533.2, B-411533.4, Oct. 9, 2015, 2015 CPD ¶ 316 at 5; *Bannum, Inc.--Protest and Recon.*, B-411074.2, B-411074.3, June 12, 2015, 2015 CPD ¶ 231 at 3. The details of implementing the corrective action are within the sound discretion and judgment of the contracting agency, and our Office will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. *DGC Int'l*, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3; *Northrop Grumman Info. Tech., Inc.*, B-404263.6, Mar. 1, 2011, 2011 CPD ¶ 65 at 3.

Here, the solicitation as initially issued informed vendors it was subject to the RSA, which requires that a preference be given to SLAs. RFQ at 1, 8. Specifically, the solicitation stated that if the quotation from an SLA was “determined to be technically acceptable . . . and fair and reasonably priced, it will be deemed the presumptive awardee of the contract” in accordance with the RSA. *Id.* at 8. However, the solicitation also included language that indicated that the agency would make a best-value tradeoff decision which included the quotation of the SLA. *Id.* at 9 (“The Government will conduct a comparative assessment of quoter’s responses based upon the evaluation factors and subfactors explained below.”).

In reviewing Severson’s protest, the agency considered that the solicitation may have led vendors to believe that it was the agency’s intention to award the contract to the SLA only if the SLA submitted the proposal that provided the best value to the government when considered with the other quotations submitted. COS at 2. This was not the agency’s intention. *Id.* The agency explains that the best-value language was included in the solicitation in error, and is not consistent with the agency’s obligation to provide an SLA priority under the RSA. *Id.* The agency therefore amended the solicitation to include the evaluation language that is consistent with the competitive range standard in the RSA and implementing regulations. *Id.*; RFQ amend. 3 at 8 (“[A] RSA [SLA] that submits an offer will be granted a priority in the source selection. If an SLA submits an offer that is in the competitive range, the Contracting Officer may initiate discussions solely with the SLA for the purpose of facilitating an award to the SLA without further consideration of the other quotes.”). Based on this record, we

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that the agency intends to issue an amendment to “align the RFQ to the competitive range standard of the [RSA] regulation.” AR, Exh. 3, Notice of Corrective Action. The agency explains that the solicitation was issued under the RSA, and that the basis of award in the solicitation as issued reflected that award would be made on a best-value tradeoff basis, instead of the basis of award provided by the RSA. COS at 2; Supp. AR at 1-2. The notice of corrective action, initial and amended solicitation, and the requirements of the RSA provide sufficient documentation to support the agency’s decision to amend the basis for award to make it consistent with the RSA.

conclude that it was within the agency's discretion to amend the solicitation and that the amendment was appropriate to remedy the concerns that caused the agency to take corrective action.

Severson argues that the agency's corrective action should have only consisted of determining whether the price offered by the SLA was fair and reasonable, and conducting a best-value tradeoff with other vendors, not amending the basis of award. Protest at 14. Severson's proposed corrective action, however, ignores the agency's concern that requiring the SLA to submit the quotation that is the best value to the government when judged against other non-SLA vendors is inconsistent with the agency's obligation under the RSA and implementing regulations. In this regard, as we have pointed out, the RSA provides a priority for the award of a contract to blind persons, represented by SLAs, so long as the proposal or quotation submitted by the SLA falls within the competitive range. 20 U.S.C. § 107(b); 34 C.F.R. § 395.33. Specifically, if a designated SLA submits an offer found to be within the competitive range, award must be made to the SLA absent a determination that the SLA cannot provide food service at a reasonable cost and quality comparable to that available from current providers. 20 U.S.C. § 107d-3(e); 34 C.F.R. § 395.33(a), (b). Given this requirement, we find that the agency properly amended the solicitation to provide that if an SLA submits a quotation that is in the competitive range, the agency may initiate discussions solely with the SLA to facilitate an award to the SLA, without further consideration of other quotations.³

The protest is denied.

Thomas H. Armstrong
General Counsel

³ Severson also asserts that any corrective action proposed by the agency must ensure fair and impartial competition. Protest at 11. Severson complains that here, the corrective action will steer the award to the RSA even if another vendor submits a superior quotation. We find this argument to be without merit. As discussed above, the RSA and implementing regulations specifically require the agency to give preference to SLAs in procurements subject to the RSA. 20 U.S.C. § 107; 34 C.F.R. § 395.33.