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Decision

Matter of: Integration Technologies Group, Inc.

File: B-419116.3

Date: December 22, 2020

William T. Welch, Esq. and Johana A. Reed, Esq., McMahon, Welch and Learned, PLLC, for the protester.

C. Kelly Kroll, Esq., Michelle E. Litteken, Esq., and Andrew J. Mohr, Esq., Morris, Manning & Martin, LLP, for OMNI Business Systems; and C. Peter Dungan, Esq., Miles & Stockbridge P.C., for ID Technologies, LLC, the intervenors.

Major Alissa J. Schrider and Isabelle P. Cutting, Esq., Department of the Air Force, for the agency.

Sarah T. Zaffina, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging the agency failed to evaluate quotations pursuant to the solicitation criteria because successful vendors offered items that were not manufactured in a Trade Agreements Act designated country is dismissed as untimely where protester failed to diligently pursue information giving rise to this protest ground.

DECISION

Integration Technologies Group, Inc. (ITG), of Falls Church, Virginia, protests the failure of the Department of the Air Force to establish a blanket purchase agreement (BPA) with it under request for quotations (RFQ) No. 1400757, for digital printing and imaging (DPI) products. ITG argues that the quotations of the successful vendors should have been found unacceptable.

We dismiss the protest.

BACKGROUND

On October 24, 2019, pursuant to Federal Acquisition Regulation (FAR) subpart 8.4, the Air Force issued a letter of invitation (LOI) to small businesses holding General Services Administration (GSA) Federal Supply Schedules (FSS) 36, 70, and 75 contracts seeking quotations to establish BPAs for DPI products. Agency Report (AR), Tab 3, RFQ GSA

e-Buy Notice at 1-2; AR, Tab 4, LOI at 1. In addition to the BPA requirements, the LOI included an RFQ for the Air Force's 2020 product selection cycle (PSC) for which vendors selected for the BPAs would compete.¹ RFQ at 2; LOI at 1. The estimated value of purchases to be made under the BPAs is \$21.1 million annually. LOI at 1. The solicitation provided that the Air Force intended to establish BPAs with four small businesses, but reserved the right to select more or less than four vendors depending on the competitiveness of the quotations received. *Id.* The solicitation required that all products offered as separate end products comply with the requirements of the Trade Agreements Act (TAA).² AR, Tab 15, LOI attach. 4.0, RFQ at 1.

Vendors were required to submit the terms and conditions of their GSA schedule, as well as evidence, such as screenshots or a certified list of each item from the GSA schedule, that the offered products were on their schedule or their supplier's GSA schedule. LOI at 2. The solicitation also required vendors to submit a Vendor Capability Assessment (VCA) that included responses to a series of questions about the vendor's ability to deliver the DPI products and services globally, and their response to the PSC 2020 RFQ. *Id.*; AR, Tab 13, LOI attach. 2.0, Evaluation Plan at 1. Responses to the RFQ were to be made in a government-provided template where the vendor could enter technical, pricing, and total cost of ownership (TCO) information for its offered products.³ LOI at 1. The completed template was to be used in both the evaluation to select the BPA recipients and the evaluation to select products for PSC 2020. AR, Tab 13, LOI attach. 2.0, Evaluation Plan at 1.

¹ PSCs are conducted annually to provide products to the Air Force as part of the effort to decentralize purchasing of these DPI products. AR, Tab 1, Contracting Officer's Statement (COS) at 5. Once the products are selected, they are made available on AFWay, the Air Force's e-commerce portal, which includes an order approval process that generates orders, routes them for approval, and releases the orders to vendors for fulfillment. See AR, Tab 6, LOI attach. 1.1, PSC Process Guide at 3-4. This portal is not publically available. See *id.* BPA holders will compete for PSC 2020 and future PSCs. LOI at 1.

² The TAA generally requires that end products be acquired from the United States or designated countries. 19 U.S.C. § 2511(a); *Veterans Healthcare Supply Sols., Inc.*, B-418038 *et al.*, Dec. 23, 2019, 2019 CPD ¶ 431 at 5-6.

³ Total cost of ownership (TCO) is calculated from the response template for each product category and uses the government-provided quantity; the vendors' price per device, which includes warranty and shipping costs, as well as consumables included with the device; and replacement consumables. RFQ at 3; see *also* AR, Tab 16, LOI attach 4.1, PSC2020 Response Template. The quantities in the template are government estimates based on historical data and do not reflect guaranteed minimums. RFQ at 2.

BPAs would be established on a lowest-priced, technically acceptable basis. AR, Tab 13, LOI attach. 2.0, Evaluation Plan at 3. To be considered for the BPAs, vendors had to successfully pass two stages. *Id.* at 1, 3. In the first stage, the Air Force would evaluate the VCA for relevancy of capability, which is experience and performance, as it relates to the BPA requirements. *Id.* at 1-2. In the second stage, the agency would evaluate the vendor's technical and pricing information provided in the completed templates to determine the worldwide total cost of ownership (WTCO).⁴ *Id.* at 2-3.

After establishing the BPAs, the Air Force would evaluate the technical and pricing information provided in the vendors' templates to select products for PSC 2020. *Id.* at 3. Multiple products for each product category would be selected. *Id.* Every product proposed in the response template and determined to meet the agency's requirements in stage 2 of the BPA evaluation would be selected for inclusion in the PSC 2020 catalog. *Id.*

The agency received 18 quotations by the amended closing date of December 19, 2019. COS at 8. After the stage 1 evaluation, the Air Force determined 13 vendors had the required capabilities and all 13 were deemed technically compliant across all product categories in stage 2. *Id.* at 8-9. All vendors' WTCO values were verified for accuracy. *Id.* at 9.

The evaluated prices of the successful vendors, which are five-lowest-priced vendors, and ITG are shown in the table below:

Vendor	Price
Ace Computers (Ace) ⁵	\$30,749,035
Transource Services (Transource)	\$32,462,700
ID Technologies (IDT)	\$34,458,249
OMNI Business Systems (OMNI)	\$37,285,606
JTF Business Systems (JTF)	\$38,977,572
ITG	\$49,618,493

AR, Tab 34, Source Determination Document at 2.

By email on August 11, 2020, the contracting officer notified ITG that its quotation had not been selected, provided feedback on its quotation, and identified Ace, Transource, IDT, OMNI, and JTF as the vendors selected by the Air Force for the BPAs. AR, Tab 39, Email from Air Force to ITG, Aug. 11, 2020; AR, Tab 38, Notice of Unsuccessful Offer at 4. ITG's quotation was the 10th lowest-priced. AR, Tab 38, Notice of

⁴ The aggregate of the WTCO values across the product categories was the evaluated price of the quotation for this procurement. AR, Tab 13, LOI attach. 2.0, Evaluation Plan at 2-3.

⁵ Ace is also identified in the protest filings as J.C. Technologies d/b/a Ace Computers.

Unsuccessful Offer at 4. The product catalog was activated in AFWay by September 2. ITG Resp. to Req. for Dismissal exh. 2, Coast to Coast Computer Products, Inc. (CTC) Protest dated Sept. 10, 2020, at 3.

On September 10, ITG received a call from another unsuccessful vendor, CTC.⁶ ITG Resp. to Req. for Dismissal exh. 1, Aff. of ITG President at 1. During the call, CTC informed ITG that CTC had obtained a copy of the DPI PSC2020 catalog and that some products on it were not TAA-compliant. *Id.* The next day, CTC sent ITG a number of documents, including copies of the protests that CTC had previously filed or intended to file. *Id.* Upon review, ITG discovered that all five successful vendors had offered products that, according to ITG, were not TAA-compliant and did not meet the solicitation terms. *Id.* Subsequently, ITG filed a protest with our Office on September 18 arguing the Air Force failed to follow the solicitation terms when establishing BPAs with vendors offering non-TAA compliant products.⁷

DISCUSSION

The agency argues, among other things, that the protest should be dismissed as untimely because ITG failed to diligently pursue the information providing its basis for protest. AR, Tab 2, Memorandum of Law at 11-12. ITG asserts that its protest is timely because it was filed within 10 days after it learned from CTC on September 10 that the successful vendors offered products that failed to meet solicitation criteria. Comments at 8-9. ITG contends that the August 11 notice did not provide a basis for protest because the notice did not reveal the non-TAA compliant products the successful vendors offered. *Id.* at 9. According to ITG, that information could not have been obtained from the award notice or any other information from the government, and the information only became known to ITG after the call from CTC. *Id.*

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Under these rules, a protest based on alleged improprieties in a solicitation must be filed prior to bid opening or the time established for receipt of proposals, 4 C.F.R. § 21.2(a)(1), and all other protests generally must be filed no later than 10 calendar 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). A protester may not passively await information providing a basis for protest. Rather, a protester has an affirmative obligation to diligently pursue such information and a protester's failure to utilize the most expeditious information-gathering approach under the circumstances may

⁶ CTC filed protests with our Office on September 11 and 14. *Coast to Coast Computer Products, Inc.*, B-419116, B-419116.2, Dec. 18, 2020, 2020 CPD ¶ 370.

⁷ ITG submitted an amended protest on October 1 to cure a clerical error in the original protest. ITG Resp. to Req. for Dismissal at 4; ITG Resp. to Req. for Dismissal exh. 4.

constitute a failure to meet its obligation in this regard. *Bannum, Inc.*, B-408838, Dec. 11, 2013, 2013 CPD ¶ 288 at 5; *Automated Med. Prods. Corp.*, B-275835, Feb. 3, 1997, 97-1 CPD ¶ 52 at 2-3; see, e.g., *Thomas May Constr. Co.*, B-255683, Mar. 23, 1994, 94-1 CPD ¶ 210 at 2.

Here, the record fails to show that the protester diligently pursued the information forming the basis for its protest. While, on its face, the August 11 unsuccessful vendor notice arguably did not disclose the grounds for the protest, the protester did not pursue additional information, and instead waited until CTC contacted it, over five weeks after it received the notice, before acting. The record demonstrates that before CTC's call, ITG made no effort to obtain the information that formed the basis for its protest that the agency's evaluation was improper because successful vendors offered products that were not TAA-complaint and did not meet the solicitation terms. Moreover, after the call, ITG merely examined documents CTC provided to ITG, including CTC's own protests. Indeed, if CTC had not contacted ITG, there is nothing in the record that indicates ITG would have pursued a protest at all. Accordingly, we conclude that ITG failed to satisfy the requirement for diligent pursuit because it passively awaited information from another unsuccessful vendor and opted to piggyback on CTC's protests, rather than pursue such information on its own. As ITG's protest was filed on September 18, more than 10 days after it received the award notice on August 11, and ITG did not diligently pursue the information providing the basis for its protest in the interim, its protest is untimely.

The protest is dismissed.

Thomas H. Armstrong
General Counsel