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Decision

Matter of: Foxhole Technology, Inc.

File: B-419577

Date: May 12, 2021

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DIGEST

Protest challenging agency's decision to set aside procurement for historically underutilized business zone small business concerns under a procurement conducted pursuant to the Federal Supply Schedule procedures of Federal Acquisition Regulation subpart 8.4 is denied where three quotations were received from HUBZone businesses that are capable of performing the work.

DECISION

Foxhole Technology, Inc. of Fairfax, Virginia, a service-disabled veteran-owned small business concern, protests the decision of the Department of Education to set aside for historically underutilized business zone (HUBZone) small business concerns, request for quotations (RFQ) No. 91990021Q0001 for highly adaptive cyber augmentation services. Foxhole argues that the agency's decision to set aside the procurement for HUBZone small business concerns was based on inadequate market research and was therefore not justified.

We deny the protest.

BACKGROUND

The agency used General Services Administration (GSA) Federal Supply Schedule (FSS) procedures, Federal Acquisition Regulation (FAR) subpart 8.4, for this procurement, and issued the RFQ as a set-aside for HUBZone small business concerns. The RFQ was issued under Multiple Award Schedule (MAS) Special Item Number (SIN) 54151, highly adaptive cybersecurity and order level materials. Agency

Report (AR), Tab H, RFQ at 47. Performance under the order will involve cybersecurity operations to protect the agency's critical information, systems, and assets. In general, the solicitation requested technical, project management, and operations support for the agency's information assurances services' cyber operations program. *Id.* at 57, 60.

The RFQ provided for the issuance of an order on a best-value tradeoff basis considering the following factors: technical approach, resource plan and key personnel, past performance, management plan, and price. *Id.* at 49.

The Department of Education conducted market research to determine if there were HUBZone small businesses that could meet its needs before it issued the RFQ as a set-aside. AR, Tab A, Contracting Officer's Statement (COS) at 2. The agency first searched the GSA eLibrary website and found that there were 37 HUBZone small business companies registered under GSA SIN 54151, highly adaptive cybersecurity services. *Id.*, AR, Tab E, GSA eLibrary Contractor Listing. The contracting officer then reviewed the contractor terms and conditions/pricelists of five randomly selected HUBZone small business contractors listed under SIN 54151. COS at 2. The contracting officer concluded based on this review that there were at least five HUBZone small business concerns that would be able to meet the agency's requirements. *Id.*

According to the agency, while the terms and conditions/pricelists vary for each vendor, they provide information about the vendor's capabilities. Agency Response to GAO Question, Apr. 20, 2021 at 2. For example, the terms and conditions/pricelists for one of the identified potential sources include "detailed labor category descriptions and [the] scope of its available HACS [highly adaptive cybersecurity services] services that are consistent with the [a]gency's requirements under the [s]olicitation." *Id.*

On December 10, the agency requested that the Office of Small and Disadvantaged Business Utilization (OSDBU) provide a small business participation review clearance to support the contracting officer's decision to set aside the procurement for HUBZone small business concerns. COS at 2. OSDBU approved the set-aside on December 14. AR, Tab F, Small Business Participation Review. The agency issued the RFQ on January 13, 2021, to all HUBZone small business concerns registered under GSA MAS SIN 54151. *Id.* at 3. This protest followed.

DISCUSSION

Foxhole protests the agency's decision to set aside the procurement for HUBZone small business concerns. The protester specifically alleges that the agency failed to perform adequate market research to demonstrate that quotations would be received from at least three vendors that can meet the RFQ requirements.

The preference programs of FAR part 19 are generally not applicable to procurements conducted under the FSS procedures of FAR subpart 8.4. An agency may, however, in its discretion, set aside orders or blanket purchase agreements for any of the small

business concerns identified in FAR section 19.000(a)(3). FAR 8.405-5(a)(1); see *Aldevra*, B-411752, Oct. 16, 2015, 2015 CPD ¶ 339 at 4 (FAR section 19.502-2 does not apply when placing orders under the FSS program); *Encompass Group, LLC*, B-410726, Feb. 2, 2015, 2015 CPD ¶ 93 at 3-4; *Swank Healthcare*, B-407367, Dec. 12, 2012, 2013 CPD ¶ 7 at 3.; see also FAR 19.502-4(c). Where, as here, an agency issues a solicitation under the FSS that requires a statement of work and exceeds the simplified acquisition threshold, the agency is required to provide the RFQ to as many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that quotations will be received from at least three vendors that can fulfill the requirements. FAR 8.405-2(c)(3)(iii)-(A), (B).¹

According to Foxhole, the agency's market research--reviewing a list of HUBZone contractors under the relevant SIN and reviewing the terms and conditions/pricelists of five random vendors from the list--is sufficient to identify the existence of HUBZone vendors under the relevant SIN, but not whether those vendors are capable of performing the agency's requirements. Foxhole asserts that there are numerous aspects of this RFQ that would make it difficult for a HUBZone vendor to meet the agency's needs, including the requirements for a top secret security clearance and to perform at the agency's Potomac Center Plaza facility in Washington D.C. Foxhole contends that the agency's market research was inadequate to determine if three or more vendors that were capable of meeting the agency's requirements would respond to the RFQ because the agency did not confirm that vendors could provide a workforce in the D.C. area, held the required security clearance, or could provide the magnitude of services at the skill levels required.²

Even if we were to agree that the evidence before the contracting officer was not adequate to support the set-aside determination, as a matter of policy, GAO will not disturb the agency's decision to set aside a procurement for HUBZone small business concerns where subsequent events show that sufficient HUBZone interest in the procurement does in fact exist. *The Atlantic Company of America, Inc.*, B-293974, July 1, 2004, 2004 CPD ¶ 182 at 2-3; *York International Corp.*, B-277748, Sept. 30, 1991, 91-2 CPD ¶ 282 at 74. Here, the agency received three quotations and determined that while one of the quotations was evaluated as marginal as submitted, all three vendors were capable of performing the requirements. While the protester speculates that these contractors may not in fact be capable of performing the

¹ In the alternative the agency can permit all schedule contractors that offer the required services to submit a quotation. FAR 8.405-2(c)(3)(iii)-(A), (B).

² In its protest Foxhole also asserted that there were not sufficient HUBZone vendors with the experience to perform the requirements. Protest at 12-14. The agency responded to this argument in its report, and Foxhole did not further pursue the argument in its comments on the report. We therefore considered the issue abandoned. See *Jacobs Tech, Inc.*, B-413389, B-413389.2, Oct. 18, 2016, 2016 CPD ¶ 312 at 5.

requirements, we have no basis to conclude that the agency misrepresented their capability.³

The protest is denied.

Thomas H. Armstrong
General Counsel

³ We note that despite the protester's claim, it acknowledges that there are five HUB Zone contractors that are located within 50 miles of Washington, D.C. with the required clearance. Protest at 11, 12.