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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Creative Computing Solutions, Inc.

File: B-408704; B-408704.2

Date: November 6, 2013

John E. McCarthy, Jr., Esq., James G. Peyster, Esq., and Robert J. Sneckenberg, Esq., Crowell & Moring LLP, for the protester.

Thomas O. Mason, Esq., Francis E. Purcell, Jr., Esq., David E. Fletcher, Esq., and Christopher J. Kimball, Esq., Cooley LLP, for Knight Point Solutions, LLC, an intervenor.

Roger A. Hipp, Esq., Department of Homeland Security; and John W. Klein, Esq., and Alison M. Mueller, Esq., Small Business Administration, for the agencies.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not an interested party to challenge substance of agency's evaluation of quotes where record--including protester's publicly-filed self certification--shows that protester is not a small business, and acquisition is set aside for exclusive small business participation.

DECISION

Creative Computing Solutions, Inc. (CCSI) protests the issuance of a blanket purchase agreement (BPA) to Knight Point Solutions, Inc., under request for quotations (RFQ) No. HSHQDC-13-Q-00177, issued by the Department of Homeland Security (DHS) for compliance support services for DHS's information technology services office. CCSI contends that the agency misevaluated quotations and made an unreasonable source selection decision.

We dismiss the protest because CCSI is not an interested party.

As is pertinent here, the RFQ, issued pursuant to the General Services Administration's Federal Supply Schedule (FSS), was set aside for small businesses. Agency Motion to Dismiss, exh. 1, RFQ at 1, 2. The agency issued one amendment to the RFQ that, among other things, incorporated into the solicitation questions submitted by prospective respondents, and included the

agency's answers to those questions. Question No. 16 from amendment No. 1 provided as follows: Q: "Is the Government requiring Offerors to certify as a Small Business at time of proposal submission?" A: "Yes." Agency Motion to Dismiss, exh. 2, Amend. No. 1, at 3.

CCSI submitted a quote in response to the solicitation on June 17, 2013. CCSI did not include a certification of its small business size status with its quote. Instead, the firm's quote included the following language: "CCSi's bid is based on its General Services Administration (GSA) Information Technology (IT) Schedule 70 GS-35F-0602U contract, awarded as a qualified woman-owned small business." Agency Motion to Dismiss, exh.5, CCSI Price Quote, at 1. Additionally, CCSI's quote also provided as follows: "This GSA Schedule 70 Contract is awarded as qualified woman-owned; small business. CCSi is currently certified as a small business under its GSA IT Schedule 70 contract at the proposal submission time." Id. at 2.

Because CCSI did not submit the required certification with its quote, the DHS contracting officer spoke with the relevant GSA contracting officer about CCSI's small business size status under its FSS contract. The GSA contracting officer advised that the current option period for CCSI's FSS contract was due to expire on September 17, 2013. Agency Motion to Dismiss, exh. 6, DHS Contracting Officer's Declaration. The GSA contracting officer further advised that, because CCSI failed to recertify its status as a small business during the process of exercising the option for contract performance for another year, any future extension of its FSS contract would not list CCSI as a small business. Id. The agency also researched the question of CCSI's small business size status on GSA's System for Award Management (SAM) website and found that, for the North American Industry Classification System (NAICS) code applicable to the current acquisition, CCSI had certified that it was not a small business. Agency Motion to Dismiss, exh. 4, DHS's SAM Query Results.

DHS argues that we should dismiss CCSI's protest because it is not an interested party. DHS asserts that, because CCSI is no longer a small business, and because the acquisition was set aside for small businesses, CCSI is ineligible for award.

CCSI maintains that, at the time it submitted its quote it properly relied on a certification of its size status as a small business that it previously had submitted to GSA. CCSI further contends that it was improper for the agency to have required that it recertify its size status at the time it submitted its quote because this was a solicitation for a BPA, not the award of a task order under its FSS contract. In support of its position, CCSI directs our attention to the Small Business Administration's (SBA's) regulations, 13 C.F.R. § 121.404(g)(3)(vi) (2013), which provide as follows: "A Blanket Purchase Agreement (BPA) is not a contract. Goods and services are acquired under a BPA when an order is issued. Thus, a concern's

size may not be determined based on its size at the time of a response to a solicitation for a BPA.”

Under our Bid Protest Regulations, only an “interested party” may maintain a protest; an interested party is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract, or the failure to award a contract. 4 C.F.R. §§ 21.0(a)(1); 21.1 (a) (2013). Where a firm would not be in line for award in the event its protest is sustained, that firm lacks the direct economic interest necessary to maintain a protest. PAE Gov’t Serv’s., Inc., B-407818, Mar. 5, 2013, 2013 CPD ¶ 91 at 3.

As an initial matter, to the extent that CCSI contends it was improper for the agency to have required it to certify its size status at the time it submitted its quote, its protest is untimely. As noted above, amendment No. 1 expressly incorporated that requirement into the solicitation.¹ Under our Bid Protest Regulations, 4 C.F.R. § 21.2 (a)(1), to be timely, any challenge to the agency’s inclusion of that requirement had to be raised prior to the deadline for submitting quotations, which was June 17, 2013. CCSI’s post-award protest to our Office was filed on August 12, 2013, well after the deadline for submitting quotations. We therefore dismiss this aspect of CCSI’s protest.

On the question of CCSI’s size status, there is no dispute. As noted, GSA advised DHS that CCSI had not certified its size status in connection with the exercise of the latest option under its FSS contract, and also advised that the firm would no longer be listed as a small business. In addition, CCSI itself certified on GSA’s SAM website that, for purposes of the applicable NAICS code for this requirement, it was other than small. Finally, the record also includes a press statement that is posted to CCSI’s website in which CCSI’s founder and chief operating officer is quoted as stating that it had been awarded a contract by the Department of Veterans Affairs as “one of seven large businesses.” Agency Motion to Dismiss, exh. 3, Press Statement at 1. Thus, CCSI characterizes itself--and indeed has certified its size status--as a large business for purposes of the applicable NAICS code under which this acquisition was conducted.

¹ CCSI suggests that the question and answer quoted above created a latent ambiguity concerning whether or not size status certification at the time quotes were submitted was required. We disagree. The amendment, in no uncertain terms, required firms to certify their size status at the time they submitted their quotes. Agency Motion to Dismiss, exh. 2, Amend. No. 1, at 3.

Since this acquisition is set aside for small businesses, and since the only evidence in the record is that CCSI is not a small business, we conclude that the firm would be ineligible for award of this BPA should its protest be successful.² It follows that CCSI is not an interested party for purposes of maintaining its protest.

The protest is dismissed.

Susan A. Poling
General Counsel

² We also solicited the views of the SBA in connection with this question. The SBA stated that, based on this record, it appeared that CCSI was other than a small business. SBA Letter to GAO, Oct. 23, 2013, at 3.