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Decision

Matter of: Amentum Services, Inc.

File: B-421614

Date: July 24, 2023

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Kathleen D. Martin, Esq., Department of State, for the agency.
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DIGEST

Protest by a large business protester challenging the agency's award of a sole-source contract under the Small Business Administration's (SBA) 8(a) program is dismissed where the protester acknowledges that it does not challenge whether the requirement was properly and reasonably offered to SBA by the agency and accepted by SBA into the 8(a) program.

DECISION

Amentum Services, Inc., of Chantilly, Virginia, protests the Department of State's award of a sole-source contract under the Small Business Administration's (SBA) section 8(a) program¹ to MEC Energy Services, LLC, of New Town, North Dakota, for operations and maintenance services. Amentum, a large business, raises various allegations about the award to MEC, a tribal 8(a) small business.

We dismiss the protest.

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the SBA to enter into contracts with government agencies and to arrange for performance of those contracts through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. This program is commonly referred to as the 8(a) program.

BACKGROUND

This protest concerns the Department of State's efforts to seek a contractor for various staffing support services for certain U.S. embassies and consulates in Europe and Asia, and for the offices of the United States Mission to the North Atlantic Treaty Organization (NATO) and the military delegation at the new NATO headquarters in Brussels, Belgium. Agency Report (AR), Tab 1, Solicitation at 5;² Contracting Officer's Statement (COS) at 2. The contractor would be required to provide American workers with top-secret security clearances from the agency to perform various duties such as operations, maintenance, repair, custodial, administrative, clerical, and other related functions. Solicitation at 12. Amentum describes itself as the "35-year incumbent on this program" through its now-wholly owned subsidiary PAE Government Services, Inc.; most recently, it has performed these requirements through a contract awarded in 2015. After the term of that contract ended in 2020, the protester has continued to perform the requirements under non-competitively awarded extensions of its expired contract. Protest at 5; COS at 1.

Beginning in early June 2022, the agency commenced a series of acquisition planning efforts, which included: conducting small business market research to determine whether the requirements could be met at a fair and reasonable price by a small disadvantaged business firm; consulting with the agency's Office of Small and Disadvantaged Business Utilization; and developing a solicitation. COS at 2-6. Through these efforts, the agency identified MEC, LLC, a tribal 8(a) small business, as interested in performing the requirements. In November, the agency sent solicitation No. 19AQMM23R0034 to MEC. Thereafter, MEC submitted a proposal, which the agency found met the solicitation's technical and cost requirements. *Id.* at 3; see *generally* Solicitation.

On March 29, 2023, the agency sent a letter to the SBA, requesting approval under the Small Business Act and the FAR to negotiate a contract for these requirements with MEC. COS at 3-4; AR, Tab 4, Agency Letter to SBA. On March 30, the SBA accepted the agency's offer of the requirements for the 8(a) program. The SBA accepted the requirements on behalf of MEC and authorized the agency to negotiate directly with MEC. AR, Tab 5, SBA Resp. to Agency's Letter.

On April 3, the agency awarded contract No. 19AQMM23C0047 to MEC. The contract is a time-and-materials, labor hour services contract for an initial 1-year period of performance, with an estimated cost of \$28,057,665. COS at 4; see *also* AR, Tab 4, Agency Letter to SBA. The agency also executed a justification and approval (J&A), which discussed, among other things: MEC's experience with the agency and staffing support services; the agency's small business goals, specifically under the 8(a) program; and, ultimately, that the selection of MEC achieves the agency's objectives "in that it facilitates an award to a firm with a demonstrated track record of performance in

² All citations are to the Adobe PDF page numbers of the documents referenced in this decision, unless otherwise paginated.

the key areas and objectives of this requirement, and it significantly reduces acquisition lead time to provide support to the Department in achieving an important element of their small business goals.” AR, Tab 6, J&A at 2.

That same day, the agency informed Amentum of the selection of MEC as the new contractor. On April 7, Amentum sent a letter to the agency with its concerns about the award, and the agency responded on April 13. This protest followed.

DISCUSSION

Amentum protests the agency’s award to MEC, which was a sole-source contract pursuant to the SBA’s acceptance of the agency’s offer of its requirements under the 8(a) program. As a preliminary matter, we note that the Small Business Act affords SBA and contracting agencies broad discretion in selecting procurements for the 8(a) program; we will not consider a protest challenging a decision to procure under the 8(a) program absent a showing of possible bad faith on the part of government officials or that regulations may have been violated. 4 C.F.R. § 21.5(b)(3); *Rothe Comput. Sols., LLC d/b/a Rohmann Joint Venture*, B-299452, May 9, 2007, 2007 CPD ¶ 92 at 3.

Amentum acknowledges that it does not claim that the agency engaged in fraud or bad faith. Rather, primarily, Amentum challenges the agency’s evaluation of MEC’s capabilities. Protest at 9. Based on our review, we dismiss the protest because Amentum has not sufficiently identified violations of regulations to maintain this protest.³

Here, Amentum acknowledges that it does not challenge what appears to be one of the foundational aspects of this award: that is, whether the requirement was properly and

³ Amentum also has not established that it, as a large business, has the requisite legal interest to maintain various other arguments about this award to a small business under the SBA’s 8(a) program. In this regard, an offeror is an interested party if it is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a)(1); *DMS Int’l*, B-409933, Sept. 19, 2014, 2014 CPD ¶ 278 at 7. A protester is not an interested party if it would not be next in line for award if we were to sustain its protest. *Resource Title Agency, Inc.*, B-402484.2, May 18, 2010, 2010 CPD ¶ 118 at 9. For example, Amentum argues that, “[b]ased on statements MEC has made to Amentum” during the transition process after award, “the State Department’s conclusions about MEC’s capabilities are materially inaccurate.” Protest at 9. Amentum also argues for a broad reading of SBA’s regulations to apply to competitions outside the context of small businesses, and further claims that the agency, among other things: did not properly investigate alleged organizational conflicts of interest; inadequately evaluated MEC’s capability and cost; relied on non-competitive procurement methods due to a lack of advance planning; performed inadequate market research; and did not meet the “standard” to “act with fairness and openness” as instructed by the FAR. See *id.* at 7-19; Comments at 2-15. We dismiss these arguments because Amentum is not an interested party to raise them.

reasonably offered to SBA by the agency and accepted by SBA into the 8(a) program. Comments at 6. As noted above, the agency requested approval from the SBA and offered the requirements to the SBA. The SBA accepted the agency's offer of the requirements and, further, authorized the agency to negotiate directly with MEC. AR, Tab 4, Agency Letter to SBA; AR, Tab 5, SBA Resp. to Agency's Letter.

The agency argues that Amentum's protest is procedurally deficient, in part because of its failure to challenge the offer and acceptance of the requirements into the 8(a) program. The agency asserts that "[t]his acquisition has been accepted by SBA into its 8(a) program and must remain within that program until SBA decides to release the requirement." Memorandum of Law (MOL) at 15. The agency further argues that, "given that SBA has accepted the requirement into its program, it cannot be removed from this program unless authorized by SBA and Amentum, a large business[,] cannot compete for this requirement." *Id.* at 10, *citing, see, Eminent IT, LLC, B-418570 et al.*, June 23, 2020, 2020 CPD ¶ 222 at 3 (under the particular circumstances of that case, noting when requirements "must remain in the 8(a) program unless the SBA agrees to release it for non-8(a) competition"). We note that this is commonly referred to as the "once 8(a), always 8(a)" rule and, according to SBA, exists to further the statutory goals of the 8(a) program by ensuring that prime federal contract support is available to SBA and 8(a) participants as a form of business development assistance. *See, e.g., M&C Venture Grp., LLC, B-419870, July 28, 2021, 2021 CPD ¶ 262 at 4 n.3.*

In its comments responding to the agency's report, Amentum does not counter the agency's position. Instead, the protester asserts that whether "the requirement was properly and reasonably offered to SBA by the Department and accepted by SBA into the 8(a) program" was "not a basis of Amentum's protest." Comments at 6. In essence, Amentum concedes this aspect of the validity of the set-aside decision.

Instead, Amentum attempts to cure its procedurally deficient protest by broadly claiming that the agency "violated SBA's 8(a) regulations by abandoning an existing full-and-open competition." Protest at 16; Comments at 13. Amentum states that the agency "published three postings that sought potential sources on the government-wide point of entry (then, fedbizopps.gov [FBO]) in May and July 2019," and that Amentum "timely submitted an expression of interest to compete for this work requirement." Protest at 4, 20; Protest, Tab 2, Expression of Interest, Aug. 21, 2019. In this regard, Amentum claims that these postings are still active and it "will be able to compete for the contract once the Department takes corrective action by withdrawing its defective sole-source J&A." Comments at 15; Resp. to Req. for Dismissal at 8.

The agency asserts that the "[p]rotester's claims are erroneous as the record demonstrates the Department issued a sources sought [notice] (including attachments with a draft solicitation) in 2019 but did not formally issue the solicitation or conduct a full [and open acquisition for these services." MOL at 26; Req. for Dismissal at 1-2; see AR, Tab 3, Sources Sought. The contracting officer further explains the following:

In an effort to recompetete these services, the Department initially issued a source[s] sought [notice] in 2019 with a draft solicitation. However, due to the pandemic the Department never issued a formal solicitation relative to the sources sought and proposals were never received. Administrative issues have prevented me from being able to delete the sources sought because I was not the CO [contracting officer] of record[;] in addition, the deactivation date is missing, which is why the record shows active status. This may be a result of the record migrating from FBO into beta.SAM.gov and then current SAM.gov. The Department has filed an incident ticket to the Federal Service Desk (FSD) to request [General Services Administration] GSA delete or deactivate the notice.

COS at 1 (internal citation omitted).

Notwithstanding Amentum's claim that there is an active solicitation available for competition, we find the protester's argument lacks factual support and is therefore meritless. As the agency argues, a sources-sought notice is not a solicitation. MOL at 26, *citing AeroSage LLC*, B-415893, B-415894, Apr. 17, 2018, 2018 CPD ¶ 142 at 4-5 (noting that "a sources sought notice is a request for information by the agency and not a solicitation that anticipates the award of a contract") and *Sigmattech, Inc.*, B-296401, Aug. 10, 2005, 2005 CPD ¶ 156 at 4. As such, the protester has not established any basis to question the agency's explanation of the facts here. Accordingly, the protester's argument does not set forth a legally sufficient basis of protest. 4 C.F.R. §§ 21.1(f), 21.5(f).

As noted above, we will not consider a protest challenging a decision to procure under the 8(a) program absent a showing of possible bad faith on the part of government officials or that regulations may have been violated. 4 C.F.R. § 21.5(b)(3); *Rothe Comput. Sols., LLC d/b/a Rohmann Joint Venture, supra* at 3. Here, Amentum has not shown possible bad faith or that regulations may have been violated since, ultimately, it acknowledges that it does not challenge whether the requirement was properly and reasonably offered to SBA by the agency and accepted by SBA into the 8(a) program. Comments at 6. Under these circumstances, where a large business protester has not sufficiently identified violations of regulations to maintain this protest challenging the award of a sole-source contract to a small business under the SBA's 8(a) program, we dismiss the protest.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel