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# Decision

**Matter of:** The Lioce Group, Inc.

**File:** B-421582

**Date:** July 5, 2023

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John W. Cox, Esq., Department of State, for the agency.  
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## DIGEST

Protest challenging agency's decision to exclude the protester's quotation from the competition is denied where the agency reasonably concluded that the protester's quotation failed to comply with the material terms of the solicitation.

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## DECISION

The Lioce Group, Inc. (TLG), a small business located in Huntsville, Alabama, protests the exclusion of its quotation submitted in response to request for quotations (RFQ) No. 19AQMM23Q0004, issued by the Department of State (DOS) for the establishment of a blanket purchase agreement (BPA) to obtain multi-functional copier devices and associated maintenance services. TLG contends that the agency unreasonably excluded its quotation from the competition.

We deny the protest.

## BACKGROUND

On December 21, 2022, DOS issued the RFQ as a small business set-aside using the procedures of Federal Acquisition Regulation (FAR) subpart 8.405-3. The competition was limited to vendors holding a General Services Administration (GSA) multiple award schedule (MAS) contract 532420LC, Office Management – Printing and Photographic

Equipment. Agency Report (AR) Exh. 2, RFQ amend. 0002 at 3.<sup>1</sup> The solicitation sought quotations for a contractor to provide multi-functional copier devices and associated lifecycle maintenance services to support DOS's headquarters, annexes, and field offices within the continental United States. AR Exh. 3, Statement of Work at 1; Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3-4. The RFQ provided for the establishment of a single BPA on a best-value basis for one base year and up to four 1-year options. RFQ at 4.

Pertinent to this protest, the RFQ informed vendors as follows:

All GSA contractor teaming arrangements (CTAs) must be specifically identified as such. DOS requires that all firms under a GSA CTA meet all BPA requirements. Additionally, team members in a GSA CTA must provide with their business quote a teaming arrangement, signed by all teaming companies, that identifies all team members, their corresponding GSA Schedule contract numbers, and fully details the duties and responsibilities of each team member and the teaming arrangement will be maintained throughout the life of the BPA. Note that at least one of the vendors under a proposed GSA [CTA] must have and maintain the MAS required by the RFQ: 532420LC Operating Lease Plan for Copiers.

*Id.* at 8.

In this regard, the RFQ's general instructions provided: "if prime/subcontractor or GSA Schedule teaming arrangements are quoted, a teaming agreement shall be submitted as part of the quote, which clearly details the roles, responsibilities, and distribution of effort (by type and percentage) between the parties in performance of the Government's requirement." *Id.* at 10.

Finally, as relevant to this protest, the RFQ incorporated the agency's answers to multiple vendor questions. AR Exh. 4, Questions and Answers (Q&As). For example, with regard to teaming arrangements under this small business set-aside, the Q&As included the following exchanges:

[Q:] Since this is a total small business set aside, please confirm that a small business GSA contractor with a clearance cannot sub-contract to a large business GSA contractor with or without a facility clearance to provide maintenance using the large business' technicians?

[A:] Yes, this award will be made only to a prime contractor that is listed in SAM as a total small business concern. The Government is not prohibiting the prime contractor from using a small or other than small business from providing maintenance. However, all subcontractors

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<sup>1</sup> The RFQ was amended twice. Unless otherwise noted, citations to the RFQ are to amendment 0002 provided in the agency report as exhibit 2.

providing maintenance technicians on site shall be required to possess an FCL [Facility Security Clearance] of Secret prior to contract performance[.]

AR Exh. 4, Q&A No 20.

[Q:] If it is necessary for a GSA contractor to team, sub-contract, or form a joint venture to fulfill the requirements, please confirm that these arrangements must be formed with another small business?

[A:] See response to question 20 above[.]

*Id.*, Q&A No. 21.

On or before the RFQ's January 25, 2023, submission deadline, the agency received five quotations, including two quotations submitted by TLG.<sup>2</sup> COS/MOS at 1. This decision only addresses the agency's decision to exclude TLG's Konica quotation.

In its Konica quotation, TLG listed its GSA schedule contract "47QTCA18D00AD, MAS Category 532420LC" and identified itself as "an authorized dealer for Konica Minolta." AR Exh. 6, TLG Vol. II, Tech. Quotation at 1, 3. TLG also stated that under its proposed teaming structure, TLG would perform "more than 51% of services workshare of this engagement" and would "tap into our established network of national Konica Minolta resources to fulfill certain elements of this project as a teaming partner." *Id.*

The Konica quotation also included, as technical attachment A, an executed document on the Konica letterhead entitled "Letter of Supply" which included the following statement: "This Letter of Supply is in reference to The Lioce Group, Inc.'s Multiple Award Schedule (MAS) Contract Number 47QTCA18D00AD." Exh. 9, Konica Letter of Supply at 2. The Letter of Supply also stated that Konica "will supply [TLG] with sufficient quantities of the offered products to meet the Federal Government's needs for the duration of the MAS contract period and any extensions thereof." *Id.*

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<sup>2</sup> TLG submitted one quotation to supply Konica Minolta Business Solutions U.S.A., Inc. d/b/a Meridian Imaging Solutions products (Konica quotation) which the protester claims was unreasonably excluded from the competition. TLG's second quotation was to supply Canon U.S.A., Inc. (Canon quotation) products. In its protest, the protester challenges the reasonableness of the agency's evaluation of its Canon quotation and asserts the best value determination was flawed. See *generally*, Protest at 14-22.

Subsequent to the filing of TLG's protest, DOS notified our Office of its decision to take partial corrective action. Specifically, the agency stated it would reevaluate all quotations received, except TLG's Konica quotation, and make a new best-value award decision. Electronic Protest Docketing System (Dkt.) No. 17, Notice of Partial Corrective Action. TLG did not object to the agency's proposed partial corrective action. On April 20 our Office dismissed as academic those portions of TLG's protest that relate to the evaluation of its Canon quotation. See Dkt. No. 21, GAO Minute Entry.

The Konica quotation also included, as technical attachment C, an executed document on Konica letterhead entitled “GSA CONTRACTOR TEAM ARRANGEMENT (“CTA”).” *Id.*, Exh. 11, GSA CTA at 1. In relevant part, the GSA CTA included the following statement: “In accordance with the Federal Supply Schedule program and Federal Acquisition Regulation 9.6, Contractor Team Arrangement, The Lioce Group, Inc. (“PARTNER”) . . . and Konica Minolta Business Solutions USA, Inc. . . . hereby enters into a 9.6 Contractor Team Agreement under the terms and conditions stated herein.” *Id.* (emphasis removed). The GSA CTA also listed TLG’s GSA MAS contract number 47QTCA18D00AD and Konica’s GSA Federal Supply Schedule contract number GS-03F-135DA. *Id.*

In reviewing the Konica quotation, the agency recognized that the quotation included, as technical attachment C, the Konica GSA CTA. The contracting officer noted that while the GSA CTA did not reference a specific procurement, it did identify the TLG GSA MAS contract at issue here and indicated that TLG and Konica “will work together on a non-exclusive basis to support this team solution.” COS/MOL at 2 *citing* AR Exh. 11, GSA CTA at 1. The agency considered whether the GSA CTA was erroneously included as other sections of the Konica quotation was submitted solely in TLG’s name. However, the absence of any subcontract agreement or other explanation in the Konica quotation, caused the agency to conclude that the GSA CTA created an ambiguity that could not be resolved through clarifications. COS/MOL at 4-5. The agency ultimately determined that, under this small business set-aside, the GSA CTA was an improper teaming arrangement between TLG, a small business concern and Konica, a large business concern and therefore was ineligible for award. *Id.*

On January 31, the agency notified TLG that its Konica quotation would not be evaluated nor considered for award because the quotation “proposed using a GSA CTA” between TLG and Konica which did not meet the RFQ’s small business set-aside requirements outlined in FAR 19.502-2, or the requirements outlined in the GSA MAS manual governing GSA CTAs and small business set-asides found at <https://www.gsa.gov/buy-through-us/purchasing-programs/gsa-multiple-award-schedule/schedule-features/contractor-team-arrangements>.<sup>3</sup> AR Exh. 18, Notification of Exclusion from Competition at 1.

On February 2, TLG responded to the agency’s notice of exclusion from the competition. Protest exh. B, TLG Response to Quotation Exclusion at 1-2. TLG advised the agency that the Konica GSA CTA was inadvertently included in its quotation

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<sup>3</sup> Specifically, the GSA regulatory guidance concerning CTAs and small business set-asides provides: “[w]hen forming a [CTA] in response to a small business set-aside, all team members must meet the socioeconomic status for the set-aside and the limitations on subcontracting (FAR 52.219-14) apply, i.e. the small business team members must perform at least 50% of the value of the work to be completed.” See <https://www.gsa.gov/buy-through-us/purchasing-programs/gsa-multiple-award-schedule/schedule-features/contractor-team-arrangements> (last visited June 16, 2023).

and that Konica was its subcontractor and not its teaming partner. TLG also requested that the agency reinstate and evaluate its Konica quotation. *Id.*

Thereafter, on March 21, DOS notified TLG that its Canon quotation had not been selected for award and that the BPA was established with Ameritel Communications Corporation, a small business located in Rockville, Maryland in the amount of \$5,254,047.24. *Id.* at exh. D, Notification to Unsuccessful Offeror. TLG requested and received a brief written explanation of the agency's award decision on March 30. *Id.* at exh. G, Post-Award Brief Explanation. This protest followed.

## DISCUSSION

TLG challenges the agency's exclusion of its Konica quotation from the competition. TLG does not dispute that its quotation included the Konica GSA CTA. Nevertheless, the protester asserts that "there can be no doubt the Konica CTA was inadvertently attached to the Konica Quote and that, read in its entirety, the Konica Quote was clearly submitted in TLG's name alone, as the prime contractor--rather than through a GSA CTA." Protest at 9. As support for its claim, TLG points out that the Konica quotation was submitted in TLG's own name as the prime contractor, under its own CAGE [commercial and government entity] code, unique entity identifier, federal tax identification number, and GSA MAS contract number. *Id.*, Comments at 2-3.

TLG further points out that the GSA CTA did not contain the requisite information to properly form a GSA CTA. Specifically, the protester asserts that a GSA CTA cannot be formed unless it specifically identifies the relevant contract under which work will be performed and identifies the specific, discrete tasks to be performed by each team member. Comments at 3 *citing* GSA Guidance on CTAs. Had the agency performed a reasonable review of its quotation, TLG contends that the agency would have concluded that the GSA CTA was not related to the procurement at issue here since it failed to meet the GSA CTA requirements as set forth in GSA's regulatory guidance on CTAs. *Id.* As further evidence that the GSA CTA was not related to the procurement at issue here, TLG points out that the GSA CTA was executed on April 18, 2022, some eight months before the RFQ was issued. Comments at 3.

DOS responds that its review of TLG's Konica quotation was reasonable and consistent with the terms of the solicitation. The agency explains that it specifically recognized that the GSA CTA, dated April 18, 2022, was "procurement-agnostic" because it included no specific reference to the procurement at issue. COS/MOL at 6. However, the agency disputes the protester's claim that the lack of any specific reference to this procurement and the execution of the GSA CTA some eight months prior to issuance of the RFQ meant that the GSA CTA was not related to this procurement. COS/MOL at 6 *citing* Protest at 10. Rather, the agency points out that the Konica Letter of Supply, also dated April 18, 2022, similarly made no reference to this procurement which "strongly suggests" that the GSA CTA "was established for the purpose of pursuing *any* viable procurement opportunity pursuant to TLG's MAS contract." COS/MOL at 6 (emphasis in original).

At the outset, we note that there is no dispute that this BPA competition was restricted to small business GSA MAS contract holders pursuant to the procedures of FAR subpart 8.405-3. See RFQ at 3. It is the vendor's responsibility to submit an adequately written quotation which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. *SRA Int'l, Inc.; NTT DATA Servs. Fed. Gov., Inc.*, B-413220.4 *et al.*, May 19, 2017, 2017 CPD ¶ 173 at 10. Further, our prior decisions make clear, agencies are not required to infer what a vendor intended to submit; in other words, agencies are not required to piece together general statements and disparate parts of a protester's quotation or proposal to determine the protester's intent. *Technatomy Corp.*, B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 6; see also, *Optimization Consulting, Inc.*, B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17; *Affolter Contracting Co., Inc.*, B-410878, B-410878.2, Mar. 4, 2015, 2015 CPD ¶ 101 at 7.

On this record, we have no basis to object to the agency's review of TLG's Konica quotation. As noted, the solicitation specifically required all vendors "under a GSA CTA to meet all BPA requirements." RFQ at 8. As discussed, TLG's quotation included a GSA CTA which, as argued by the agency, was an improper teaming arrangement between TLG and Konica that did not meet the solicitation's small business set-aside requirements and was ineligible for award. However, TLG argues that its quotation should have been evaluated and considered for award because it erroneously included the GSA CTA in its quotation. We disagree. It was TLG's responsibility to ensure that its quotation demonstrated compliance with the RFQ's requirements and the record before us makes clear that TLG failed to do so. As a consequence, on this record, we find no basis to question DOS's conclusion that TLG's quotation was ineligible for award under both the RFQ and GSA's regulatory guidance concerning GSA CTAs and small business set-asides. Accordingly, we deny this aspect of TLG's protest.

Alternatively, TLG contends that inclusion of the GSA CTA in its quotation was an apparent minor mistake that should have been resolved through clarifications. According to the protester, the agency's failure to seek clarification or to waive the inclusion of the GSA CTA as a minor informality was unreasonable. Protest at 10-13; Comments at 2-6. In response to the protester's claims, the agency asserts that it was not obligated nor required to seek clarifications or to waive inclusion of the GSA CTA in the Konica quotation as a minor informality. COS/MOL at 7-8.

As we have stated previously, there is no requirement under FAR subpart 8.4 that an agency seek clarifications or otherwise conduct discussions with vendors or offerors. FAR 8.404(a); *USGC Inc.*, B-400184.2 *et al.*, Dec. 24, 2008, 2009 CPD ¶ 9 at 3. Here, TLG complains that the agency acted unreasonably by failing to request "a simple clarification" from TLG as the GSA CTA clearly "was attached in error" in its quotation. See Comments at 6. We disagree. It was TLG's responsibility--not the agency's--to ensure the submission of a well written quotation that demonstrated compliance with all the RFQ requirements. Accordingly, we find nothing unreasonable in the agency's

decision not to seek clarifications regarding the protester's GSA CTA included in its quotation.

Finally, as to TLG's claim that the agency could waive the inclusion of the GSA CTA as a minor informality, we know of no procurement law or regulation that would permit the agency to do so within the context of a competitive BPA procurement. The identity of the prime contractor is a material requirement, and the ambiguity in the quotation as to the true prime contractor was not a minor clerical mistake that could be waived. In short, we find no merit in any of TLG's complaints regarding the agency's review of TLG's Konica quotation.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel