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Decision

Matter of: Global Engineering Services, LLC

File: B-421866

Date: October 2, 2023

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DIGEST

Protest that the agency should be prevented from proceeding with award--based on the contracting officer's prior representation that the protester's failure to extend its bid acceptance period would result in the agency cancelling and resoliciting for its requirement--is dismissed where the protester is not an interested party to challenge the award, and our Office lacks the jurisdiction to consider the protester's estoppel argument.

DECISION

Global Engineering Services, LLC (Global), a service-disabled veteran-owned small business (SDVOSB) of Midvale, Utah, protests the award of a contract to SGC Services 2, LLC (SGC), a small business of Gresham, Oregon, under invitation for bids (IFB) No. 36C78623B0011, issued by the Department of Veteran Affairs (VA), for construction services at the Cedar City National Cemetery in Cedar City, Utah. The protester contends the agency's decision to award a contract, rather than cancel the IFB and resolicit bids, was unreasonable.

We dismiss the protest.

BACKGROUND

The agency issued the IFB on March 19, 2023, as a small business set-aside, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 14. Agency Report

(AR), Tab 8, attach. S02, IFB at 1.¹ The solicitation contemplated the award of a single, fixed-price contract, for construction services at the Cedar City National Cemetery in Cedar City, Utah. IFB at 1. Specifically, the contractor would provide “all transportation, tools, materials, components, permits, license, labor and supervision to completely prepare site for building operations, including demolition and removal of existing structures, and furnish labor, materials, equipment, and services and perform and complete all work” identified in the IFB’s drawings and specifications. *Id.*

The agency received multiple bids by the April 27 submission deadline. COS at 1. After the VA completed its evaluation, but before making award, the 60-day bid acceptance period specified in the solicitation expired. *Id.* at 2; see IFB at 1; see also AR, Tab 10, attach. S10, Global’s Bid at 5 (providing that Global’s bid could be accepted by the government within 60 days of the bid due date). On June 30, days after the 60-day period expired, the contracting officer asked Global to confirm that its “pricing is still valid[,]” to which the protester explained it would have to communicate with its subcontractors before confirming its original price. AR, Tab 20, attach. 7, Email Exchanges at 2. On July 7, the contracting officer explained to Global that the VA “may not have additional funds available to make award” to Global if its bid price increased. *Id.*, attach. 6 at 1. Following two additional attempts by the VA to ask whether Global could confirm its original bid price, on July 12, Global submitted a revised bid, which included an approximately 2 percent price increase. *Id.*, attach 13 at 1.

On July 13, the contracting officer replied to Global, explaining that “[a]fter researching the current issue, I do not believe we will legally be able to move forward with the award if your bid amount changes.” Protest, exh. 1, Email Exchanges at 1. That same day, by separate email, the contracting officer also explained that if Global was able to honor its original bid amount, the agency could finalize the award, otherwise, “we will be required to cancel the solicitation and re-solicit.” *Id.* By telephone on July 14, the contracting officer explained that if Global did not honor its original bid price, the agency would either award to the next lowest bidder or cancel the IFB and resolicit bids. COS at 3-4.

On July 17, Global again explained to the contracting officer that it was unable to extend its original bid price, but would pursue a competitive bid in the event the agency resolicited bids. Protest, exh. 2, Email Exchanges at 2. That same day, the VA contacted SGC, the next-lowest bidder, to inquire whether it would honor its original bid price; the firm indicated it would. AR, Tab 20, attach. 18, Email Exchanges at 1-2. The VA made award to SGC on July 27. AR, Tab 17, Award Notice at 1. Global filed the instant protest on August 7.

¹ The agency issued IFB No. 36C78623B0008 on March 16, but due to an administrative error, the solicitation was inaccurately advertised as a SDVOSB set-aside. Contracting Officer’s Statement (COS) at 1. The agency cancelled that solicitation, and issued the instant solicitation under which the award to SGC was made, on March 19. *Id.*

DISCUSSION

Global presents a single issue of protest, that the “VA should be estopped [or prevented] from proceeding with the award made to SGC.” Protest at 4. In this regard, the protester acknowledges that the agency “is not mandated to re-solicit when the bid acceptance period expires” nor is it prohibited from doing so. *Id.* However, the protester contends the firm relied, to its detriment, on the contracting officer’s assertion that the VA would cancel and resolicit its requirement if Global did not extend its bid acceptance period. *Id.* at 4-5; Comments at 4-7. More specifically, the protester argues it declined to extend its bid acceptance period in reliance on the contracting officer’s assertion that the agency would cancel and resolicit bids. Comments at 6-8. Accordingly, Global argues the VA “should be estopped from proceeding with the award made to SGC[.]” *Id.* at 7. In response, the agency argues Global voluntarily increased its bid pricing, thus excluding itself from further consideration for award. Memorandum of Law (MOL) at 7-13. We conclude the protester’s argument fails for several reasons.

First, the protester is not an interested party to challenge the award to SGC. Our regulations provide that only interested parties may pursue protests with our Office. 4 C.F.R. § 21.1(a). An interested party is defined as “an actual or prospective bidder or 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).

The underlying record demonstrates that Global’s bid expired 60 days after the bid acceptance date. See AR, Tab 10, attach. S10, Global’s Bid at 5. Moreover, Global made the business decision not to extend its initial bid, at its original price, after this 60-day period lapsed, but instead, submitted an “updated proposal” at a higher cost. AR, Tab 10, attach 13 at 1. Where a bidder qualifies an extension to its bid acceptance period by conditioning it upon a change in a material term of its bid--such as price--that bidder is ineligible for award after the original bid expires. *Kos Kam, Inc.*, B-221806, May 14, 1986, 86-1, CPD ¶ 460 at 1. Bidders are not permitted to revise their bids when granting an extension, as this is tantamount to submitting a second bid after bid opening, which is contrary to competitive bidding principles. *S.J. Groves & Sons Co.*, B-207172, Nov. 9, 1982, 82-2 CPD ¶ 423 at 1. Here, Global’s failure to extend its bid as originally submitted, and its submission of a new bid (at a new price), rendered Global ineligible for award. Accordingly, because Global was not otherwise eligible for award, the protester lacks the requisite economic interest to challenge the agency’s award to SGC. 4 C.F.R. § 21.0(a)(1).

Second, our Office lacks the jurisdiction to consider Global’s protest, as presented. The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3557. Under CICA, our Office is authorized to decide bid protests “concerning an alleged violation of a procurement statute or regulation.” 31 U.S.C. §§ 3552, 3553. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Cybermedia Techs., Inc.*, B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2.

Here, Global's estoppel argument is not grounded in an asserted violation of procurement law or regulation, but rather, is derivative of a proclaimed detrimental reliance on representations made by the agency contracting officer. Indeed, the protester concedes that the VA's actions *were not* inconsistent with applicable law and regulation. See Protest at 4 ("While the Government is not mandated to re-solicit when the bid acceptance period expires, the Government can choose to do so as there is no legal prohibition against re-solicitation when the cognizant contracting officer determines that it is in the interest of the Government."). Accordingly, because Global's estoppel argument is not founded on an alleged violation of a procurement statute or regulation, we conclude that our jurisdiction to resolve bid protests under CICA does not encompass this cause of action. *Veolia Water North Am. Operating Servs., LLC*, B-298017, B-291307.5, May 19, 2006, 2006 CPD ¶ 86 at 10 (explaining that our Office lacks the requisite jurisdiction to consider estoppel arguments not founded on alleged violations of procurement law or regulation).

In any event, the record does not demonstrate that Global detrimentally relied on the agency's alleged assertion that the VA would cancel and resolicit its requirement if Global did not extend its bid. To the contrary, after the agency explained that it may not have the necessary funds to award a contract if Global increased its price, the protester, on July 12, making an independent business decision, submitted a revised bid with an increased price. AR, Tab 20, attach 13, Email Exchanges at 1. Global's decision not to extend its original bid past the 60-day acceptance period, but instead to increase its bid price, pre-dates any assertion by the VA that it would cancel and resolicit its requirement. Moreover, while the contracting officer (after Global had already increased its bid price) indicated the agency would cancel and resolicit for the VA's requirement if Global could not extend its bid, the very next day, the agency explained to Global that the VA had two options if Global declined to extend its bid: either award the contract to the next lowest bidder or cancel the IFB and resolicit bids. COS at 3-4. Accordingly, the protester's assertion that it was somehow induced not to extend its original bid based on representations made by the VA is not supported by the underlying record.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel