



Decision

Matter of: Diltex, Inc.

File: B-422434

Date: June 17, 2024

Dil Singh for the protester.

Robert Roth for Access Products, Inc., an intervenor.

Kristen M. Nowadly, Esq., General Services Administration, for the agency.

Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's determination that protester's quotation was ineligible for establishment of a blanket purchase agreement (BPA) is denied where the record reflects that the BPA would extend beyond the current term of the protester's General Services Administration (GSA) schedule contract.
 2. Protester is not an interested party to challenge the agency's establishment of a BPA with another vendor where the BPA was to be issued under a vendor's GSA schedule contract and the protester's schedule contract lacked a sufficient remaining period of performance to cover the potential duration of the anticipated BPA.
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DECISION

Diltex, Inc., a small business located in West Covina, California, protests the establishment of a blanket purchase agreement (BPA) with Access Products, Inc., a small business of Colorado Springs, Colorado, under request for quotations (RFQ) No. 47QSEA-23-Q-0018, issued by the General Services Administration (GSA), Federal Acquisition Service, for general purpose commercial information technology equipment. The RFQ sought to establish multiple BPAs with vendors holding contracts under GSA Multiple Award Schedule special item number (SIN) 33411, for purchasing of new electronic equipment.¹ The protester contends that the quotation of Access Products

¹ The agency also established BPAs with the following small business vendors, which Diltex does not challenge: Sterling Computers, of North Sioux City, South Dakota; Westwind Computer Products, of Albuquerque, New Mexico; OSI Federal

(continued...)

failed to comply with the terms of the solicitation. The protester also challenges the agency's determination that GSA was prohibited from establishing a BPA with Diltex because the BPA would extend beyond the current term of Diltex's GSA schedule contract.

We deny the protest in part and dismiss the protest in part.

BACKGROUND

On June 7, 2023, GSA posted the RFQ on GSA's e-buy website to vendors holding contracts under GSA's Multiple Award Schedule SIN 33411. Protest, exh. 3, RFQ at 1.² Using the procedures of Federal Acquisition Regulation (FAR) subpart 8.4, the RFQ sought to establish BPAs for information technology (IT) hardware, including laptop and desktop computers, rugged tablets, single and multi-function printers, radio equipment, and monitors. *Id.* at 2. The solicitation was set aside for small businesses and anticipated the establishment of multiple BPAs contemplating the issuance of fixed-priced task orders for a base year and four 1-year options, for a total possible performance period of 60 months. *Id.* at 12. If all available options are exercised, the BPAs' period of performance would extend through March 10, 2029. *Id.*; Contracting Officer's Statement (COS) at 4. A BPA was to be established with the first and second lowest-price technically acceptable vendors by contract item line number (CLIN) for each original equipment manufacturer (OEM). RFQ at 52.

In response to the solicitation, GSA received timely quotations from ten vendors, including Diltex. Protest, exh. 4, Unsuccessful Offeror Notice at 1. Due to administrative issues, GSA repeatedly asked vendors to extend the valid period for their quotations.³ COS at 2. On February 28, 2024, GSA emailed all vendors to request a final quotation extension until March 21, 2024. *Id.*

After evaluating quotations, the agency determined that six vendors provided the first and second lowest-priced technically acceptable quotations by OEM and selected those

Technologies, Inc., of Chantilly, Virginia; JTF Business Corporation, of Springfield, Virginia; and V3Gate, LLC, of Colorado Springs, Colorado. Protest, exh. 4, Unsuccessful Offeror Notice at 2-3.

² All citations to the record are to the consecutive numbering of the pages in the Adobe PDF format of the documents provided by the parties.

³ Specifically, on December 1, 2023, GSA emailed vendors to request a quotation extension until January 15, 2024. COS at 2. On January 8, GSA emailed vendors to request a quotation extension until February 16. *Id.* On January 10, GSA emailed vendors to clarify certain aspects of their quotes; vendor responses were due by January 24. *Id.* On February 7, GSA emailed vendors to request a quotation extension until February 29. *Id.* On February 28, GSA emailed all potential awardees to request a quotation extension until March 21. *Id.*

vendors for establishment of the BPAs.⁴ The agency advised Diltex on March 6 that it had not been selected for establishment of a BPA. Protest, exh. 4, Unsuccessful Offeror Notice. Thereafter, during a back-and-forth email exchange between the protester and the agency, GSA also advised Diltex on March 13 that its GSA schedule contract expires on January 15, 2029, and that there are no option periods in its GSA schedule contract that, if exercised, would cover the BPA's period of performance, which ends March 6, 2029. Protest, exh. 2, Email Correspondence at 2. The contracting officer explained, therefore, that pursuant to FAR section 8.405-3(d)(3), GSA was prohibited from establishing a BPA with Diltex because the BPA would extend beyond the current term of Diltex's GSA schedule contract. *Id.*; COS at 4. The protester filed the instant protest with our Office on March 15, 2024.

DISCUSSION

The protester challenges the establishment of a BPA with Access Products, arguing that the awardee's quotation failed to comply with a solicitation requirement to include letters of supply from the manufacturer authorizing the vendor to distribute products it does not manufacture. The protester also challenges GSA's determination that the agency was prohibited from establishing a BPA with Diltex because the BPA would extend beyond the current term of Diltex's GSA schedule contract. For the reasons discussed below, we find reasonable the agency's determination that Diltex was ineligible for award because its GSA schedule contract did not meet the RFQ's period of performance requirements and deny the protest on this basis. Because the protester would not be eligible for a BPA, we also conclude that Diltex is not an interested party for the purpose of challenging GSA's evaluation and selection decision. This aspect of the protest is therefore dismissed.⁵

As relevant here, the RFQ provided that the BPA would be entered into between GSA and the vendor pursuant to FAR section 8.405-3 and the vendor's applicable GSA schedule contract. RFQ at 2. The solicitation further provided that "if option periods remain on the GSA Schedule contract, the end of a Schedule contract option period is not considered 'expiration' for purposes of this BPA or Delivery Requisition hereunder and deliveries may continue (See FAR 8.405-3(d)(3) [] for details)." *Id.* In this regard, section 8.405-3(d)(3) of the FAR provides the following: "Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance."

⁴ For example, under the first CLIN (for laptop and desktop computers), the agency awarded to both the first and second lowest-priced vendors for Dell computers and to both the first and second lowest-priced vendors for Hewlett Packard computers. Protest, exh. 4, Unsuccessful Offeror Notice at 2.

⁵ Although we do not address all of the protester's arguments in this decision, we have considered all of them, and find no basis to sustain the protest.

Diltex does not dispute that its GSA schedule contract, including all options, extends only through January 15, 2029, and therefore, will expire prior to the end of the BPA's period of performance, March 6, 2029. Resp. to Req. for Dismissal at 2 (acknowledging that Diltex's GSA schedule contract "falls short" by 49 days). The protester argues, however, that at the time it submitted its initial quotation in September 2023, it had a full five years left on its GSA schedule contract, and that it is the government's fault that the award date kept getting moved back.⁶

Our Office has recognized that a BPA under a GSA schedule contract is not established with the contractor directly, but rather is established under the contractor's GSA schedule contract, such that the BPA orders ultimately are to be placed against the successful vendor's GSA schedule contract. *GBK P'ship, LLC-Constant Assocs., Inc.*, B-417039, Jan. 24, 2019, 2019 CPD ¶ 30 at 5, citing *Panacea Consulting, Inc.*, B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 1-2 n.1. Thus, as we have further recognized, when an agency intends to place an order under a GSA schedule BPA, the vendor must have a valid GSA schedule contract in place because that contract is how the agency satisfies the competition requirements of the Competition in Contracting Act in connection with any orders issued under the BPA. *Canon USA, Inc.*, B-311254.2, June 10, 2008, 2008 CPD ¶ 113 at 3-4. In this regard, FAR section 8.405-3(d)(3) requires a vendor's GSA schedule contract to have sufficient duration, including

⁶ In its response to the agency's request for dismissal, Diltex raises a new argument that was not included in its initial protest. Specifically, the protester asserts that the RFQ included language that, in the protester's view, permits GSA to establish a BPA with a vendor that has a GSA schedule contract that expires prior to the end of the BPA period of performance. Resp. to Req. for Dismissal at 1-2. To be timely, a protest other than an objection to the terms of a solicitation must be raised within 10 days after the protester knows or should have known of its bases for protest. 4 C.F.R. § 21.2(a)(2). Additionally, where a protester initially files a timely protest, and later supplements it with new grounds of protest, the later-raised allegations must independently satisfy our timeliness requirements, since our Regulations do not contemplate the piecemeal presentation or development of protest issues. *Vigor Shipyards, Inc.*, B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5.

Here, the record establishes that GSA advised Diltex on March 13 that its quotation was ineligible for establishment of a BPA pursuant to FAR section 8.405-3(d)(3) because Diltex's GSA schedule contract expires on January 15, 2029, and there are no option periods in its GSA schedule contract that, if exercised, would cover the BPA's period of performance, which ends March 6, 2029. Protest, exh. 2, Email Correspondence at 2. Because the protester was aware that its quotation was ineligible for the establishment of a BPA based on FAR section 8.405-3(d)(3) on March 13, any protest grounds regarding that issue were required to be filed within 10 days of that date. 4 C.F.R. § 21.2(a)(2). The protester, however, did not raise its argument disputing the applicability of FAR section 8.405-3(d)(3) until March 28. Because the protester did not raise this argument to our Office within 10 days after learning the information on which it is based, the argument is dismissed as untimely.

potential options, to coincide with the entire potential period of performance for the resulting BPA. *Meridian Knowledge Solutions, LLC, B-420150 et al.*, Dec. 13, 2021, 2021 CPD ¶ 388 at 4.

On this record, we conclude that the agency reasonably determined that Diltex was ineligible for award because the BPA would extend beyond the current term of Diltex's GSA schedule contract. The record reflects, as noted above, that the anticipated BPAs would include a base year and four 1-year options, for a total possible performance period of 60 months; if all available options are exercised, the BPAs' period of performance would extend through March 6, 2029. RFQ at 12; CO Statement at 4. The record also shows that Diltex's GSA schedule contract does not have a sufficient period of performance to cover the entire potential performance period of the anticipated BPA. Req. for Dismissal, exh. 1, Diltex GSA Schedule Contract at 1; Resp. to Req. for Dismissal at 2 (acknowledging that Diltex's GSA schedule contract did not meet the period of performance requirement). The term of performance is generally a material solicitation requirement, to which failure to conform renders a vendor ineligible for award. *Meridian Knowledge Solutions, LLC, supra* at 5. Here, Diltex's quotation was based on a GSA schedule contract that included an insufficient period of performance to cover the potential duration of the BPA.

Diltex argues that at the time it submitted its initial quotation in September 2023, it had a full five years left on its GSA schedule contract, and therefore, its quotation met the FAR requirement at the time of initial quotation submission. The fact remains, however, that despite the fact that the procurement delay was caused by the agency, on the date the BPAs were established, Diltex's GSA schedule contract did not have a sufficient period of performance to cover the potential duration of the BPA, and therefore, failed to comply with the requirements of FAR section 8.405-3(d)(3). As such, on this record, we find nothing unreasonable regarding GSA's determination that Diltex was ineligible for award. See FAR 8.405-3(d)(3); *NCS Techs., Inc., B-417956, B-417956.2*, Dec. 13, 2019, 2019 CPD ¶ 427 at 11 (sustaining protest challenging the agency's establishment of a BPA with another vendor where the BPA was established under the vendor's GSA schedule contract that included an insufficient duration to cover the entire period of performance of the resulting BPA); *GBK P'ship, LLC-Constant Assocs., Inc., supra*, at 4 (finding that a vendor was ineligible for award where its GSA schedule contract included an insufficient period of performance to cover the potential duration of the anticipated BPA). This protest ground is denied.

Finally, Diltex challenges the agency's evaluation of the awardee's quotation. Because, however, as discussed above, Diltex's quotation was properly found ineligible for award, Diltex is not an interested party to challenge other aspects of the agency's evaluation

where it appears from the record that there would be other vendors in line for the BPA. *Computer World Servs. Corp.*, B-410567.2, B-410567.3, May 29, 2015, 2015 CPD ¶ 172 at 8; see also *Sea Box, Inc.*, B-408182.5, Jan. 10, 2014, 2014 CPD ¶ 27 at 4.

The protest is denied in part and dismissed in part.

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General Counsel