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Decision

Matter of: Prak Industries, LLC

File: B-422517

Date: July 17, 2024

Ruth E. Ganister, Esq., Rosenthal and Ganister, LLC, for the protester.
Joshua A. Mullen, Esq., Christopher Lockwood, Esq., and
Joshua R. Funderburke, Esq., Womble Bond Dickinson LLP, for North Wind Federal Services, LLC, the intervenor.
William B. Blake, Esq., Department of the Interior, for the agency.
Raymond Richards, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's decision to eliminate the protester from the competition is denied where the agency's decision was reasonably based on the terms of the solicitation and the contents of the protester's proposal.

DECISION

Prak Industries, LLC (Prak), an Indian Small Business Economic Enterprise (ISBEE) of Camuy, Puerto Rico, protests its elimination from the competition conducted under request for proposals (RFP) No. 140R1723R0002, issued by the Department of the Interior, for janitorial services. The protester argues that the agency misidentified the offeror of its proposal resulting in its unreasonable elimination from the competition.

We deny the protest.

BACKGROUND

On September 14, 2023, the agency issued the solicitation as a set-aside for ISBEE concerns under the procedures of Federal Acquisition Regulation (FAR) part 12. RFP

at 1.¹ The agency sought proposals for comprehensive janitorial services to be performed at the Grand Coulee Dam complex in Grand Coulee, Washington. *Id.* at 5.

The solicitation contemplated the award of a fixed-price contract with a 1-year base period and four 1-year option periods. *Id.* Award would be made to the offeror whose proposal “conforming to the solicitation” represented the best value to the government considering two non-price factors (technical approach and past performance) and price. *Id.* at 55-56, 60. Relevant to the protest, the solicitation incorporated by reference FAR provision 52.204-7, System for Award Management (SAM), which required offerors to be registered in SAM.² *Id.* at 57. Proposals were due by November 3. *Id.* at 1.

The agency received two proposals in response to the solicitation, one from Prak and one from North Wind Federal Services (North Wind) of Idaho Falls, Idaho. Memorandum of Law (MOL) at 1.³ The evaluation results were as follows:

	Tech. Approach	Past Performance	Price
Prak	Outstanding	Exceptional	\$6,562,276
North Wind	Good	Satisfactory	\$6,898,955

Protest, exh. 2, Debriefing at 9-10.⁴

Following the evaluation, the agency concluded that Prak was ineligible for award because the agency considered the proposal to have been submitted by Prak-Integrity Joint Venture--a joint venture composed of Prak and Integrity National Corporation of Silver Spring, Maryland--and the joint venture was not registered in SAM. *Id.* at 9; MOL at 2. The agency found that while each member of the joint venture was individually registered in SAM, the joint venture itself was not registered. Protest, exh. 2, Debriefing

¹ Citations to the RFP are to the conformed copy filed by the agency. Electronic Protest Docketing System (Dkt.) Nos. 5, 9.

² SAM is the governmentwide point of entry and the official government system for entity information. FAR 2.101; <https://sam.gov> (last visited July 2, 2024).

³ On April 29, 2024, the agency filed a “request for summary decision” which contained a legal memorandum and a copy of Prak’s proposal. See Dkt. No. 17. Essentially, the agency asked our Office to decide the protest based on the record as of the date it filed its request for summary decision. As the record did not yet contain Prak’s response to the agency’s position, we declined the request. Dkt. No. 18. However, based on the agreement of all parties, we treated the agency’s request as its agency report. See Notice of Briefing Schedule (detailing the agreement of the parties). Thus, citations to the MOL are to the legal memorandum filed with the agency’s April 29 request. Our decision refers to the agency’s April 29 request as the agency report (AR).

⁴ Prak filed its exhibits as a combined Adobe PDF file without a page numbering system. Therefore, our citations are to the PDF page numbers of the combined file.

at 9. As the solicitation incorporated FAR provision 52.204-7, which required offerors to be registered in SAM, the agency concluded that the joint venture did not meet the registration requirement and was thus ineligible for award. *Id.* Ultimately, award was made to North Wind. *Id.* at 10. After learning the basis for its elimination, Prak timely filed this protest.

DISCUSSION

Prak challenges its elimination from the competition, arguing that it, Prak Industries, LLC, was the offeror that submitted the proposal and not the joint venture. Accordingly, Prak asserts that it was therefore eligible to receive award because Prak Industries, LLC was registered in SAM, and that the joint venture did not need to be registered in SAM because it was not the actual offeror. Protest at 2-3; Comments at 3. The agency argues that based on the contents of the proposal, Prak-Integrity Joint Venture was the offeror, and because the joint venture was not registered in SAM, the proposal was reasonably eliminated from the competition. MOL at 5. As discussed below, we deny the protest.⁵

When reviewing a protest challenging the rejection of a proposal, we examine the record to determine whether the agency's judgment was reasonable and in accordance with the solicitation and applicable statutes and regulations. *Distributed Sols., Inc.*, B-416394, Aug. 13, 2018, 2018 CPD ¶ 279 at 4. The evaluation of proposals is a matter within the procuring agency's discretion; we will not disturb the agency's judgment unless the record shows that the evaluation did not have a reasonable basis or was inconsistent with the terms of the solicitation, law, or regulation. *Ahtna-RDI JV, Inc.*, B-418012.6, B-418012.7, Jan. 5, 2021, 2021 CPD ¶ 14 at 4.

An offeror bears the burden of submitting an adequately written proposal that contains all the information required under a solicitation. *Top Guard, Inc.*, B-420719, July 28, 2022, 2022 CPD ¶ 202 at 8. Where a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation. *Ahtna-RDI JV, supra* at 4.

As noted above, the solicitation incorporated by reference FAR provision 52.204-7, System for Award Management. RFP at 57, 60. This provision requires offerors to be "registered in SAM when submitting an offer." FAR provision 52.204-7(b)(1). Following the technical evaluation, the agency assessed offerors' SAM registration status and found that while Prak and Integrity National Corporation were each separately registered as stand-alone entities, Prak-Integrity Joint Venture, the identified offeror,

⁵ Prak raises other collateral arguments. While our decision does not address each argument raised, we have reviewed them all and find no basis to sustain the protest. For example, Prak complains that it did not receive a debriefing in accordance with FAR section 15.503. Protest at 2; Comments at 4-5. Whether an agency provides a debriefing and the adequacy of a debriefing are not issues that we will consider. *CAMRIS Int'l, Inc.*, B-416561, Aug. 14, 2018, 2018 CPD ¶ 285 at 5.

was not registered. Protest, exhibits at 9-10, Debriefing. The agency therefore found the proposal ineligible on that basis. *Id.*

According to the protester, the agency incorrectly identified the offeror as Prak-Integrity Joint Venture. Protest at 2-3. Prak explains that it (Prak Industries) submitted the proposal as the offering entity of an unincorporated joint venture, and that this was made clear by its identification of Prak Industries, LLC, as the offeror in box 17a of standard form 1449.⁶ *Id.*; Comments at 2-3. Accordingly, Prak contends that this was sufficient to identify Prak Industries as the actual offeror. Because Prak Industries as the offeror was also registered in SAM, the protester argues that the agency improperly rejected its proposal. Comments at 5.

The agency stands by its decision to eliminate the proposal. According to the agency, notwithstanding box 17a of form 1449, the proposal made “abundantly clear” that Prak-Integrity Joint Venture was the offeror. MOL at 3. For example, the agency notes that the first page of the proposal states “Prak Integrity Joint Venture (JV) is pleased to have the opportunity to submit this proposal[.]” MOL at 3; AR, Exh. B, Prak Proposal at 1. As another example, the agency points to language in the joint venture agreement attached to the proposal stating “[t]he Joint Venture will solicit contract awards and will be the Prime Contractor for any such contracts received.” MOL at 3; AR, Exh. B, Prak Proposal at Appendix A, exh. A ¶ 2a.

In addition, the agency also notes that prior to informing the protester that its proposal was ineligible, the agency contacted Prak and asked if the joint venture “ha[d] a separate identity, [unique entity identifier (UEI)] and cage code for the [joint venture].” Protest, exh. 5, Email from Agency to Prak, Jan. 2, 2024. In response, Prak stated that “PRAK Industries submitted our proposal as an unincorporated joint venture and, therefore, does not have a separate identity, UEI or cage code for the [joint venture].” *Id.*, Email from Prak to Agency, Jan. 3, 2024. The agency asserts that this response identified the joint venture as the offeror, and that Prak did not state that it was the actual offeror acting as a prime contractor. MOL at 4, 5.

On this record, we have no basis to sustain the protest. We agree with the agency that the substance of the proposal indicates that Prak-Integrity Joint Venture was the offeror. The proposal plainly states that it was submitted by Prak-Integrity Joint Venture. AR, Exh. B, Prak Proposal at i, 1. Also, as discussed by the agency, the joint venture agreement states that Prak-Integrity Joint Venture will be the prime contractor and confirms that the purpose of the joint venture is to “propose for, negotiate and perform” the solicited work. AR, Exh. B, Prak Proposal at Appendix A, exh. A ¶ 2a; *id.* at Appendix A ¶ 2.0. The agreement also states that “[t]he Joint Venture shall have full

⁶ The RFP instructed offerors to complete certain blocks on standard form 1449, which is titled “Solicitation/Contract/Order for Commercial Items.” RFP at 1. The form contains information specific to the procurement. As relevant to the protester’s argument, block 17a on the standard form 1449 is titled “contractor/offeror” and has space where an offeror can input their identifying information. *Id.* at 1-2.

responsibility for performance of the Contract, with Prak primarily responsible for managing the Contract and for the delivery of services.” *Id.* ¶ 7.1. Furthermore, when asked by the agency for certain identifying information regarding the joint venture, Prak did not clarify that it was the offeror but rather stated that it submitted the proposal as an unincorporated joint venture.

While form 1449 did list Prak as the offeror in box 17a, the vast weight of the evidence in the record demonstrates that the actual offeror was the joint venture. To the extent the information in box 17a created any ambiguity about the identity of the actual offeror, it was Prak’s responsibility to make that clear, which the firm failed to do, even when provided an opportunity to clarify this to the agency.⁷ On this record, we find reasonable the agency’s elimination of the proposal. See *Top Guard, Inc., supra*.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁷ The protester also asserts that by listing Prak in box 17a of form 1449, Prak agreed to function as the prime contractor. Protest at 3-4; Comments at 2. This assertion is directly at odds with the joint venture agreement which states that Prak-Integrity Joint Venture “will be the Prime Contractor[.]” AR, Exh. B, Prak Proposal at Appendix A, exh. A ¶ 2a.