



Decision

Matter of: Tunica-Biloxi Services, LLC

File: B-422571

Date: July 26, 2024

DOCUMENT FOR PUBLIC RELEASE

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DIGEST

Protest challenging firm's elimination from competition because agency submitted erroneous information to Small Business Administration for certificate of competency (COC) review is denied, because protester's own error caused agency to include incorrect contact information in COC referral letter.

DECISION

Tunica-Biloxi Services, LLC (TBS), a small business of Mansura, Louisiana, protests the Small Business Administration's (SBA's) decision to close without action a certificate of competency (COC) review file for TBS under invitation for bids (IFB) No. W912ES24B0004, issued by the Department of the Army, United States Army Corps of Engineers ("Corps" or "USACE") for forest habitat management services.¹ The protester argues that the Corps's COC referral letter improperly included incorrect contact information for TBS, resulting in SBA unreasonably closing its COC review file based on the erroneous belief that TBS declined to apply for a COC.

We deny the protest.

BACKGROUND

On January 18, 2024, using the procedures of FAR part 14, the Corps issued the IFB seeking bids for "a 5-year service contract to plant, monitor, and maintain native forest

¹ A COC is the certificate issued by SBA stating that the holder is responsible for the purposes of receiving and performing a specific government contract. Federal Acquisition Regulation (FAR) 19.601(a).

habitat in the Fargo-Moorehead area,” which is located in Cass County, North Dakota. Agency Report (AR), Tab 5, IFB at 15.² The base requirement is for 247.8 acres with an additional 5.4 acres of optional work. Both work sites are intended to “serve as environmental mitigation for impacts associated with the Fargo-Moorehead Metropolitan Area Flood Risk Management Project.” *Id.*

The IFB, issued as a small business set-aside, closed on February 28. IFB at 1; AR, Tab 9, Bid Abstract at 1. The agency received three bids, and, at bid opening, TBS had submitted the lowest-priced bid of \$3,996,724. AR, Tab 9, Bid Abstract at 1. On February 29, the Corps emailed TBS to request information needed for a pre-award responsibility determination, including a request for TBS to complete a pre-award questionnaire. COS at 2 ¶ 8; AR, Tab 23, Series of Emails between USACE and TBS at 5. Because TBS’s bid did not include an email address, the contract specialist sent the request to an email address obtained from TBS’s registration in the system for award management (SAM). AR, Tab 23, Series of Emails between USACE and TBS at 5; Memorandum of Law (MOL) at 3; see AR, Tab 7, TBS Bid at 1 (providing physical address, phone number, and name of bidder, and name of bidder’s authorized representative, but no email address). Relevant here, the email address found in SAM--*i.e.*, [name]@tbeda.org--ended with a “.org” suffix.

On March 6, TBS responded to the request for responsibility information. AR, Tab 23, Series of Emails between USACE and TBS at 4-5. In its response, TBS provided a transmittal email which attached a completed pre-award questionnaire in which the firm listed the name, phone number, and email address of the president of TBS, the individual who prepared the form. AR, Tab 12a, Pre-Award Questionnaire at 1. In the questionnaire, TBS listed the email address ending in “.org,” which is the same address from which the firm sent its email response to the agency. *Id.*; AR, Tab 23, Series of Emails between USACE and TBS at 4. The bottom of the email message included a signature block of TBS’s president, the person who completed the form and sent the email. *Id.* at 4-5. The signature block on the transmittal email, however, included a different email address than the questionnaire. The transmittal email address was otherwise identical to the questionnaire email address except that the signature block of the transmittal email it ended with a “.com” suffix--*i.e.*, [name]@tbeda.com.

From March 6 through March 20, the Corps and TBS continued to communicate regarding the agency’s request for responsibility information. *Id.* at 1-4. During this time, each communication from the Corps was sent to the email address ending in “.org” and each TBS response was sent from the email address ending in “.org.” *Id.* Each TBS email response also ended with the president of the firm’s signature block, which included the email address with the “.com” suffix. *Id.*

² Our citations use the Adobe PDF pagination of documents in the record. The IFB was amended four times. Contracting Officer’s Statement (COS) at 1 ¶ 2. Our citations are to the conformed version of the IFB included in the record.

After reviewing the documentation provided by TBS, the contracting officer determined the firm was not responsible. COS at 2 ¶ 13; AR, Tab 19, Internal USACE Emails Requesting SBA Point of Contact at 3. As TBS is a small business, the Corps requested a COC determination from SBA on March 27. AR, Tab 21, COC Referral Letter at 1. The referral letter listed an email address for TBS twice, and each time the email address was identified as ending in “.com.” *Id.* On March 28, SBA emailed TBS at the address ending in “.com” to provide instructions and the forms for TBS to apply for a COC. AR, Tab 22, Email from SBA to TBS at 1. In its email, SBA required TBS to apply for a COC by April 4. *Id.* Having received no response from TBS, on April 9, SBA informed the Corps that TBS “has declined to apply for a [COC],” that SBA closed its file, and that “the award may proceed to the next apparent successful [bidder].” AR, Tab 24, SBA Letter to USACE at 1.

After receipt of notification from SBA that TBS had declined to apply for a COC, the Corps “proceeded with the award process for the next [lowest] bidder,” and made award on April 24. COS at 3 ¶ 19. That same day, TBS emailed the Corps indicating it received notification from SAM that award was made to the second lowest-priced bidder, and the firm requested a “debrief.” Protest exh. A, Email Exchange between TBS and USACE at 2.³ Notably, the signature block on TBS’s April 24th email no longer included the email address ending in “.com,” but had been updated at some point after March 20 to include, instead, the email address ending in “.org.” *Id.* On April 25, the agency responded to TBS, remarking that as the solicitation was an IFB “there is not a debriefing for this type of procurement,” but nonetheless explained that award was made to the second lowest bidder because the Corps had been “informed by the SBA that your firm failed to respond to their request for information” for a COC. *Id.* The Corps provided a copy of SBA’s April 9th letter with its response. *Id.* This protest followed.

DISCUSSION

The protester maintains that the Corps erred when it listed the email address with the “.com” suffix, rather than the address with the “.org” suffix in the agency’s COC referral letter, and contends that TBS is unfairly being penalized for an agency error. For its part, the Corps maintains that it reasonably provided SBA with the email address included in TBS’s signature block, which TBS included repeatedly in its email correspondence with the agency. As explained below, we agree.⁴

The Small Business Act, 15 U.S.C. § 637(b)(7), gives the SBA, not our Office, the conclusive authority to review a contracting officer’s determination that a small business

³ TBS provided its protest exhibits as a single continuously paginated and bookmarked Adobe PDF file; our citations use the continuous PDF pagination.

⁴ Our decision does not discuss in detail every argument, or permutation thereof, presented by the protester. We have considered all of the protester’s arguments, however, and conclude that none provides a basis to sustain the protest.

is not responsible. We therefore do not review challenges to the SBA's decision not to issue a COC unless there is a showing that the COC denial resulted from possible bad faith on the part of the government official, or from a failure to consider vital information because of how information was presented to, or withheld from, the SBA by the procuring agency. 4 C.F.R. § 21.5(b)(2); *Quality Trust, Inc.*, B-289445, Feb. 14, 2002, 2002 CPD ¶ 41 at 3. At issue here is whether SBA was unable to consider the protester's COC application because of "how information was presented to, or withheld from, the SBA by the procuring agency." *Quality Trust, supra*, at 3.

TBS challenges the SBA's decision to close its COC file without action, contending that the Corps "simply decided that it would provide SBA an email address that was different from the one that it had repeatedly utilized in communicating with TBS." Protest at 6. The protester maintains that "the error was due to a mistake on the part of the Agency," which "led to SBA failing to properly reach out to TBS in accordance with 13 C.F.R. § 125.5," and that "it is improper for TBS to be excluded due to a government error." *Id.* The protester claims that "TBS'[s] own official bid submission documentation utilized '[name]@tbeda.org,' the correct address that the Agency should have provided to SBA."⁵ Protest at 7.

As noted above, TBS's bid did not include an email address, but its completed pre-award questionnaire provided the email address ending in ".org" of the person who prepared the form. This same person also included a signature block in each email communication that provided a different email address, one ending in ".com." The protester argues that it was unreasonable for the Corps to ignore the information contained in the pre-award questionnaire and instead use the information from the email signature block. Protest at 7. Further, the protester maintains that "[b]ecause all

⁵ The protester also contends that TBS's bid established an official single point of contact (SPOC), and that the agency was bound to use only the SPOC's contact information, which included the email address ending in ".org." Protest at 10. Relevant here, the IFB did not require bids to include an email address. See *generally* IFB; MOL at 3. Rather, in the section of the performance work statement setting forth the submittal requirements for contract deliverables, the IFB established that submittals were to be handled via an agency electronic filing software tool called the Resident Management System (RMS). IFB at 17. In this same section, the IFB stated "[t]he Contractor shall provide a SPOC in writing to the Government," who "shall be responsible for relaying all contract information between the Government and the Contractor's personnel." *Id.* at 17, 22. The IFB explains that "[t]he Government will use the [RMS] to assist in its monitoring and administration of this contract," and that the successful bidder would be required to download and install "the RMS software within 7 calendar days of receipt of the Notice to Proceed." *Id.* at 16. As TBS was not the successful bidder, it was never provided a notice to proceed nor the accompanying access to download the RMS software, which is the system in which a SPOC's contact information would be established for the contractor. MOL at 5 n.3. Accordingly, we find that the record does not support the protester's contention that TBS had established an official SPOC.

communications between USACE and TBS either came from [name]@tbeda.org or were sent to [name]@tbeda.org, there is no valid reason that either SBA or USACE should have sent an email to the incorrect email address, [name]@tbeda.com.” *Id.* at 8-9. Additionally, the protester represents that sending a message to the email address ending in “.com” generates a bounce-back undeliverable error message. Protest at 11. The protester asserts that SBA should have received such a message when it sent the COC request to the email address ending in “.com,” and SBA should have realized that “USACE provided an incorrect address.” *Id.*

The contracting officer represents that “[t]he contact information from TBS that was provided to the SBA in the COC request was taken directly from the email signature block of” the president of TBS--the person with whom USACE had emailed regarding the pre-award responsibility determination. COS at 3 ¶ 14. The contracting officer also avers that the agency “had no reason to know that this information was invalid as this is the same signature block that appeared on all TBS electronic correspondence.” *Id.* Further, the Corps explains that, in addition to emailing a request for COC information to the email address ending in “.com,” SBA called TBS but no one answered the phone and the voicemail inbox either was not set up or was full, so no message could be left. AR, Tab 25, Contract Specialist Memorandum for the Record at 1; Tab 26, Email from SBA to USACE, May 13, 2024, at 1. Also, SBA avers it “did not receive a bounce-back email” message, giving notice that the March 28 message to the email address, [name]@tbeda.com, was undeliverable. AR, Tab 26, Email from SBA to USACE, May 13, 2024, at 1.

The protester disputes SBA’s account that it attempted to call regarding the COC request. Comments at 1. Specifically, the protester represents “TBS has reviewed its call logs and found no record of any such call being made by SBA.” *Id.* The protester claims that “SBA has engaged in misrepresentation regarding the facts concerning alleged attempted calls made by SBA to TBS,” and cites to call logs for TBS’s phone number for the date in question. *Id.* at 4, 18 and *generally* at 26-50.⁶

We requested that SBA participate in the protest, and that SBA provide a declaration from the employee who handled TBS’s COC referral. The SBA employee confirms that no bounce-back emails were received in response to the two emails sent by the employee to the email address [name]@tbeda.com. SBA Decl. at 1 ¶¶ 3-5, 9. Specifically, the employee avers that on June 24 “I searched my email folders (inbox, spam, junk, quarantine, deleted, and clutter) for bounce-back emails related to my efforts to contact TBS on March 28, 2024, and 2 days following, and no bounce-back email was found.” *Id.* at ¶ 9. The employee also confirms that “[o]n or about the same day after the emails described above were sent, I placed a phone call” to the telephone number listed for TBS. *Id.* at ¶ 6. In support of this representation, the employee references the “file notes prepared at the time of the COC referral.” *Id.* In addition to the employee’s declaration, SBA legal counsel provided their “view that the COC

⁶ The protester submitted its comment with exhibits as a single continuously paginated Adobe PDF file; our citations use the continuous PDF pagination.

specialist acted reasonably and in accordance with SBA regulations in relying on the 'Contractor's official information' (as displayed in USACE's referral letter to SBA) when contacting TBS by email and telephone to provide notice and opportunity to apply for a COC." SBA Views Letter at 2.

In response, the protester continues to dispute the veracity of the agencies' claim that SBA attempted to call TBS in addition to sending emails to request TBS apply for a COC. As a result, the protester maintains that "SBA failed to make a reasonable attempt to contact TBS" in contravention of applicable regulations. Comments on SBA Views Letter at 1-2. Ultimately, however, it is not pertinent whether SBA tried to call TBS in addition to emailing the request for a COC application. Rather, the germane fact at the crux of this protest is that TBS provided the Corps with two different email addresses.

Contrary to the protester's contention that its elimination from the competition is improper because it stems from a mistake made by the agency, the root cause of the mistake lies with TBS, not the Corps. Here, TBS's bid did not include an email address. While it may have been reasonable, as the protester claims, for the agency to have used the email address, [name]@tbeda.org, from which the protester had corresponded with the Corps, it was also just as reasonable for the agency to have used the email address, [name]@tbeda.com, from TBS's own email signature block in preparing the COC referral letter. Had TBS not erred in including an address with a ".com" suffix--rather than a ".org" suffix--in the signature block, the information provided by the Corps to SBA would have been correct and TBS would have received SBA's email messages requesting that the protester apply for a COC. Thus, it was TBS's own error that introduced ambiguity into the COC process which ultimately resulted in the firm's elimination from the competition.

Nor are we persuaded by the protester's argument that it was unreasonable for the Corps to copy the email address from TBS's email signature block rather than the protester's "official bid submission" or "official documentation," in the form of the pre-award questionnaire. Protest at 7; Comments at 6. To the extent that the pre-award questionnaire is a part of TBS's "official" bid--a question we do not reach--the protester cannot escape the fact that the email transmitting the completed questionnaire introduced an internal inconsistency when it provided a different email address than the address included in the questionnaire--one address ending in ".org" and one address ending in ".com." Accordingly, we deny the protest. See e.g., *Systems Analysis & Integration, Inc.*, B-416899.2, B-416899.3, Jan. 2, 2019, 2019 CPD ¶ 15 at 3 (denying protest challenging agency's conduct of discussions where protester did not receive discussions letter due to an internal inconsistency in the protester's quotation, which provided two different email addresses for the primary contact person); *American Access, Inc.*, B-414137.3, Apr. 11, 2017, 2017 CPD ¶ 120 at 5 (denying protest allegation of a solicitation amendment ambiguity when the protester's cover letter

transmitting the acknowledged amendment reflected that the protester had the same understanding of the amendment as the agency's interpretation).

The protest is denied.

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General Counsel