



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Maxim Healthcare Staffing Services, Inc.

File: B-422389.2

Date: August 21, 2024

Hal J. Perloff, Esq., Steven A. Neeley, Esq., Melissa M. Kirby, Esq., and Eric J. Singley, Esq., Husch Blackwell LLP, for the protester.

Edward J. Tolchin, Esq., Offit Kurman Attorneys-at-Law, for InGenesis, Inc., the intervenor.

Diane Foose, Esq., and Joshua K. Adams, Esq., Department of Homeland Security, for the agency.

Charmaine A. Stevenson, Esq., Maia Stephenson, and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably found the protester was ineligible for task order award due to a temporary lapse in its System for Award Management (SAM) registration is sustained where the solicitation did not include Federal Acquisition Regulation provision 52.204-7 or otherwise notify offerors that they would be ineligible for award if their SAM registration was not active at the time of proposal submission.

DECISION

Maxim Healthcare Staffing Services, Inc.,¹ of Columbia, Maryland, protests the issuance of a task order to InGenesis, Inc., of San Antonio, Texas, under fair opportunity proposal request (FOPR) No. 70CDCR24R00000003, issued by the Department of Homeland Security, United States Immigration and Customs Enforcement (ICE), for on-site medical staffing services for ICE residents and detainees at the following facilities located in Texas: El Paso, Houston, Montgomery, Port Isabel, and Taylor. The protester contends that the exclusion of its proposal from consideration for the task order due to a temporary lapse in its System for Award Management (SAM) registration is unreasonable and contrary to the terms of the solicitation.

¹ The protester states that effective April 1, 2024, Maxim changed its name to Amergis Healthcare Staffing, Inc. Protest at 1 n.1.

We sustain the protest.

BACKGROUND

The agency issued the FOPR on October 20, 2023, to holders of ICE's Health Service Corps Medical Staffing indefinite-delivery, indefinite-quantity (IDIQ) contracts in accordance with Federal Acquisition Regulation (FAR) section 16.505. Contracting Officer's Statement (COS) at 6; Agency Report (AR), Tab 37, FOPR at 1. The FOPR contemplated the award of a single task order with a period of performance consisting of a 12-month base period, inclusive of a 2-month transition period, and four 12-month option periods. *Id.* at 2.

The FOPR stated that award would be made based on a best-value tradeoff considering the following four factors listed in descending order of importance: (1) technical approach; (2) management approach; (3) plans; and (4) price. *Id.* at 3. The non-price factors, when combined, were significantly more important than the price factor. *Id.* The FOPR also stated: "All IDIQ terms, conditions, and attachments are in full force and effect as applicable[.]" *Id.*

The agency received seven proposals, including from Maxim Healthcare Staffing Services, Inc., in response to the FOPR, and on February 16, 2024, the agency issued the task order to Maxim. COS at 6-7. However, on February 26, an unsuccessful offeror filed a protest with our Office challenging the agency's evaluation of proposals, as well as Maxim's eligibility for the award due to a lapse in its SAM registration. *Id.* at 7. The agency advised that it would take corrective action, and our Office dismissed the protest. *Spectrum Healthcare Resources, Inc.*, B-422389, Mar. 21, 2024 (unpublished decision).

During corrective action, the agency reevaluated proposals and performed a new best-value tradeoff. COS at 12. Regarding Maxim, the agency concluded as follows:

The record indicates that Maxim Healthcare Staffing Services was registered in SAM.gov with an expiration date of October 10, 2023. The current SAM.gov record shows that Maxim had an activation date of November 21, 2023. Based on the data available to the [contracting officer] via SAM.gov, this indicates a lapse in registration between October 11, 2023, and November 21, 2023. Proposals for this task order were due on November 09, 2023. At the time of proposal submission, Maxim was not registered in SAM.gov and therefore is not eligible for award.

AR, Tab 47, Source Selection Decision at 3. On May 8, 2024, the agency terminated Maxim's task order and issued a task order to InGenesis, Inc. COS at 12. After the agency provided Maxim with a debriefing, this protest followed.²

DISCUSSION

The protester argues that the decision to exclude its proposal from the competition was unreasonable and contrary to the FOPR and the relevant FAR requirements regarding SAM registration. Maxim further contends that it would have been selected for award if the agency considered its proposal in the best-value tradeoff since the agency initially selected Maxim to perform the task order.

With respect to SAM registration requirements, the general FAR policy is that offerors are required to be registered in SAM at the time an offer or quotation is submitted, except in certain circumstances, none of which are applicable here. See FAR 4.1102(a). The FAR otherwise requires that all solicitations include provision 52.204-7, System for Award Management, which states: "An [o]fferor is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation." FAR clause 52.204-7(b)(1); see FAR 4.1105(a)(1) (requiring FAR provision 52.204-7 to be inserted in all solicitations except under certain conditions not applicable here).

Relatedly, the FAR requires that solicitations that include FAR provision 52.204-7 also include clause 52.204-13, System for Award Management Maintenance, in both the solicitation and the resulting contract or agreement. FAR 4.1105(b). FAR clause 52.204-13 requires that contractors "maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement." FAR clause 52.204-13(c). The FAR further states that the contracting officer "[s]hall verify that the offeror or quoter is registered in SAM . . . at the time an offer or quotation is submitted," but also states that a contracting officer "[n]eed not verify SAM registration before placing an order or call if the contract or agreement includes the clause at 52.204-13, System for Award Management Maintenance, or a similar agency clause[.]" FAR 4.1103(a).

In explaining its decision to exclude Maxim's proposal from the competition, the contracting officer states that on March 15, 2024, the agency reviewed Maxim's SAM record, which indicated that Maxim's registration expired on October 10, 2023, and was

² The value of the task order at issue exceeds \$10 million, and was placed under a multiple-award IDIQ contract established by ICE. Accordingly, our Office has jurisdiction to consider Maxim's protest. 41 U.S.C. § 4106(f).

not reactivated until November 21, 2023.³ COS at 7. Despite this, the agency still evaluated Maxim's proposal, assigning ratings of high confidence under all three technical factors and finding its price to be "in the [REDACTED] of the pricing" and "fair, reasonable, complete, and accurate." *Id.* at 8-12. The contracting officer, who also served as the source selection authority, states:

In the Source Selection Decision Document, I noted that Maxim Healthcare Staffing Services, Inc. did not have an active SAM.gov registration at the time of proposal submission. Therefore, Maxim was ineligible for award and was removed from further consideration. Maxim was not included in the tradeoff analysis.

Id. at 12; AR Tab 47, Source Selection Decision at 3. The contemporaneous evaluation does not otherwise identify any specific language or requirements from the FOPR or the FAR in support of its decision to exclude Maxim's proposal.

The protester argues that the agency's exclusion of its proposal from consideration for the task order was unreasonable and contrary to the FOPR. Specifically, Maxim argues that the FOPR did not state that a proposal would be rejected if an offeror's SAM registration had lapsed, and did not include FAR clause 52.204-7, which Maxim also argues does not apply to task order competitions. Protest at 6. The protester further contends that pursuant to FAR section 4.1103, active SAM registration need not be verified when the governing IDIQ contract includes FAR clause 52.204-13, as Maxim's IDIQ contract does here. *Id.* at 7. Maxim argues that the temporary lapse in its SAM registration is a matter of IDIQ contract administration, and its removal from the competition on that basis constitutes an unreasonable application of unstated eligibility criteria contrary to the FOPR. *Id.*

The agency argues that Maxim was reasonably found to be ineligible for award. First, ICE argues that FAR provision 52.204-7 is required in all solicitations except under limited exceptions that are not applicable here. Memorandum of Law (MOL) at 6. ICE next contends that Maxim's IDIQ contract includes FAR clause 52.204-13 and requires that Maxim maintain an active registration throughout performance of the contract, which Maxim failed to do. *Id.* at 6 ("Maxim's SAM.gov registration lapsed from October 11, 2023[,] through November 20, 2023, and therefore Maxim did not have an active SAM.gov registration when it submitted its proposal on November 9, 2023."). In addition, the agency argues that the FOPR included the requirement that an offeror have an active SAM registration at the time of proposal submission because it explicitly

³ Although Maxim also argues that the agency knew that its SAM registration had lapsed when it made an initial award to Maxim, see Protest at 1, the record shows that this was not the case. The contracting officer states that prior to the award to Maxim, she mistakenly entered into SAM the name of a related entity that was registered and did not become aware of Maxim's lapse in SAM registration until a protest of the award to Maxim was filed. COS at 7.

stated that all IDIQ terms and conditions, including FAR clause 52.204-13, were in full force and effect. *Id.* at 6, 9.

Where a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of the solicitation. *Harper Constr. Co., Inc.*, B-415042, B-415042.2, Nov. 7, 2017, 2018 CPD ¶ 47 at 4. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Desbuild Inc.*, B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5. An interpretation is not reasonable if it fails to give meaning to all of a solicitation's provisions, renders any part of the solicitation absurd or surplus, or creates conflicts. *Innovative Mgmt. Concepts, Inc.*, B-419834.2, B-419834.3, Sept. 20, 2021, 2021 CPD ¶ 319 at 15.

On this record, we find the agency's conclusion that Maxim was ineligible for award and its arguments that this conclusion was consistent with the solicitation to be unreasonable. The record shows that the FOPR did not include FAR provision 52.204-7. See *generally* FOPR. In addition, while the solicitation for the IDIQ contract incorporated FAR provision 52.204-7, Maxim's IDIQ contract incorporates only FAR clause 52.204-13 and not FAR provision 52.204-7. AR, Tab 19, IDIQ Solicitation Section L at 1; Tab 1, Maxim IDIQ Contract at 42. Neither the FOPR nor Maxim's IDIQ contract include FAR provision 52.204-7. As a result, this provision cannot provide a justification to exclude Maxim's task order proposal from consideration as the requirement to have an active SAM registration at the time of proposal submission was not incorporated into the FOPR solicitation. To the extent the agency argues that our Office should read FAR provision 52.204-7 into the FOPR as prescribed by FAR section 4.1105(a)(1), or because it was included in the IDIQ solicitation, the agency does not cite any legal authority for its position. There is no requirement that mandatory provisions must be incorporated into solicitations by operation of law when they have been omitted.⁴ See *VivSoft Techs., LLC*, B-421561.15, B-421561.17, Apr. 11, 2024, 2024 CPD ¶ 94 at 8 n.12.

Further, while Maxim's IDIQ contract includes FAR clause 52.204-13 and requires that a contractor maintain an active SAM registration, the contract does not state that a contractor will be ineligible to compete for task orders under the IDIQ contract if its SAM

⁴ Nevertheless, we agree with the agency's argument that while FAR section 4.1103 states that a contracting officer "[n]eed not" verify SAM registration "when issuing an order, nothing prohibits a contracting officer from taking this action if they choose to do so. See MOL at 6; FAR 4.1103(a)(3). We note however, unless a contracting officer elects to include a specific solicitation provision informing offerors that the agency will verify SAM registration as authorized by FAR section 4.1103(a)(3), there is no way for offerors to know that SAM registration is a solicitation requirement. In sum, where, as here, the solicitation does not require offerors to be registered in SAM at the time of proposal submission, as explained above, it is unreasonable for the agency to eliminate them from competition for failing to be registered.

registration lapses. Nor does that FAR clause state that a lapse in SAM registration during contract performance would render a contractor ineligible for award of future task orders issued under its IDIQ contract.⁵ And although the FOPR stated that all terms and conditions of the IDIQ contract remained in full effect as applicable, nothing in the FOPR put Maxim on notice that it would be ineligible for award if its SAM registration lapsed when it submitted its task order proposal. Moreover, while the IDIQ solicitation included FAR provision 52.204-7, the IDIQ contract did not, and therefore the agency cannot rely on this language to incorporate FAR provision 52.204-7 into the FOPR. Therefore, we conclude that under the terms of this FOPR, the agency did not have a basis to find Maxim's task order proposal ineligible and remove it from consideration for award.⁶

Competitive prejudice is an essential element of every viable protest. *RemedyBiz, Inc.*, B-421196, Jan. 17, 2023, 2023 CPD ¶ 29 at 10. To demonstrate competitive prejudice, a protester must show that, but for the agency's action, it would have had a substantial chance for award. *Chugach Logistics & Facility Servs. JV, LLC*, B-421451.3, B-421451.4, Sept. 8, 2023, 2023 CPD ¶ 270 at 6.

Here, we conclude that, but for the agency's decision that Maxim was ineligible for award under the terms of the FOPR, the protester would have had a substantial chance for award. As noted, the record shows that Maxim received ratings of high confidence in all three technical factors and its proposed price was the [REDACTED] lowest of the seven proposals received. COS at 12; AR Tab 47, Source Selection Decision at 5. Indeed, Maxim was previously selected for award when the agency was unaware that Maxim's SAM registration was lapsed when it submitted its proposal. COS at 7. Accordingly, we find Maxim has demonstrated competitive prejudice here and sustain the protest.

RECOMMENDATION

We recommend that the agency terminate for the convenience of the government the task order issued to InGenesis, Inc., reopen the competition and include Maxim's proposal in its best-value tradeoff, and make a new selection decision. We also recommend that the agency reimburse the protester its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

⁵ Maxim's noncompliance with its contractual obligations under FAR clause 52.204-13 are ultimately matters of contract administration that are not for consideration by our Office. 4 C.F.R. § 21.5(a).

⁶ Because we find the FOPR did not include FAR provision 52.204-7 and that the agency therefore could not rely on it to find Maxim ineligible, we need not address Maxim's argument that FAR provision 52.204-7 does not apply in task order competitions to resolve the protest.

The protest is sustained.

Edda Emmanuelli Perez
General Counsel