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Decision

Matter of: Global Technology and Management Resources, Inc.

File: B-422333.2; B-422333.3

Date: September 18, 2024

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DIGEST

Protest challenging the awardee's eligibility for the issuance of a task order is denied where the terms of the indefinite-delivery, indefinite-quantity contract specifically permit the awardee's submission of a proposal through the contract of an affiliated company.

DECISION

Global Technology and Management Resources, Inc. (GTMR), a small business of Hollywood, Maryland, protests the issuance of a task order to Secise, LLC, a small business joint venture of Bel Air, Maryland, under solicitation No. N00421-22-R-3013, issued by the Department of the Navy, Naval Air Systems Command (NAVAIR) for engineering, logistics, and other technical contractor support services. The protester contends that the Navy unreasonably concluded that the agency could issue the task order to a firm that does not hold the associated contract.

We deny the protest.

BACKGROUND

On July 19, 2023, the Navy issued the request for proposals (RFP) to holders of the Navy's SeaPort Next Generation (NxG) multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contract, pursuant to the procedures of Federal Acquisition Regulation

(FAR) part 16. Agency Report (AR), Tab 2, RFP at 1-2, 98.¹ The solicitation sought proposals to provide logistics, engineering, and other technical services in support of NAVAIR's Air Combat Electronics Program Office (PMA-209). *Id.* at 60, 98. The RFP, issued as a small business set-aside, contemplated the issuance of a cost-plus-fixed-fee and cost task order with a 1-year base period and four 1-year option periods. *Id.* at 15.

The solicitation established that award would be made on a best-value tradeoff basis, considering a technical evaluation factor and cost/price. *Id.* at 114-15. Four offerors, including GTMR and Secise, submitted proposals by the solicitation's August 28, 2023, deadline. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 8.

On January 10, 2024, the Navy issued the task order to Secise. *Id.* at 9. GTMR protested to our Office, arguing that Secise was not eligible for the task order because it did not hold a SeaPort NxG IDIQ contract, and that the agency unreasonably evaluated proposals and made an improper source selection decision. *Global Tech. & Mgmt. Res., Inc.*, B-422333, Feb. 23, 2024 (unpublished decision). In response, the agency submitted a notice of intent to take corrective action. *Id.* Specifically, the agency advised it would "carefully consider the allegations and, where necessary, re-evaluate proposals" and that "[i]f, as a result of the re-evaluation, an offeror other than the current awardee is selected for award, the Navy will terminate the existing awarded task order and make award consistent with the new award decision." *Id.* at 1. As a result, we dismissed GTMR's protest as academic. *Id.*

Following dismissal of GTMR's protest, the agency reevaluated proposals, and again selected Secise, issuing the task order on May 29. COS/MOL at 10. On the same day, the Navy notified the unsuccessful offerors. *Id.* This protest followed.²

DISCUSSION

The protester raises a number of challenges to the agency's evaluation and task order award decision. The gravamen of the protest, however, is focused on a single question: whether Secise is eligible to receive the task order even though Secise does not hold a SeaPort NxG IDIQ contract. For the reasons discussed below, we find that the SeaPort NxG IDIQ contract allows for the award here.

¹ Citations to the record are to the documents' Adobe PDF pagination. The agency amended the RFP once; all citations to the RFP are to the consolidated amended version at tab 2 of the agency report.

² The value of the task order is \$68.4 million and is therefore within our jurisdiction to review protests related to the issuance of orders exceeding \$25 million under multiple-award IDIQ contracts issued under the authority of title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(b); see *also* Protest at 5; COS/MOL at 9.

As a general matter, where an agency awards IDIQ multiple award contracts (MACs), orders may only be placed with the firms that received one of the contracts. See 10 U.S.C. § 3406; FAR 16.505(b); *Engility Corp.*, B-416650, B-416650.2, Nov. 7, 2018, 2018 CPD ¶ 385 at 3; *Florida State College at Jacksonville*, B-402656, June 24, 2010, 2010 CPD ¶ 146 at 6 n.5. Entities that do not hold IDIQ contracts cannot receive task orders. *FitNet Purchasing All.*, B-406075, Feb. 3, 2012, 2012 CPD ¶ 64 at 5 n.10.

Here, the Navy issued the task order solicitation under the SeaPort NxG multiple-award IDIQ contract. RFP at 98. In the source selection decision, the selection official recognized that “Secise is a Mentor Protégé Program Joint Venture (MPP JV) between Precise Systems, Inc. (Mentor) and Don Selvy Enterprises, Inc. (DSE) (the Protégé).”³ AR, Tab 18, Selection Official Decision Memorandum (SODM) at 9. Although “Secise did not hold a Multiple Award Contract,” DSE did, and the Navy determined that award could “be made to Secise under the DSE (small business Protégé) MAC vehicle.” *Id.*

The Navy then issued the task order, identifying the contractor as DSE on the standard form, but with the following explanation:

Secise, LLC is a SBA-approved Mentor Protégé Program Joint Venture (MPP JV) between Precise Systems, Inc. (Mentor) and Don Selvy Enterprises, Inc. (Protégé). Due to SeaPort NxG rules at the time of proposal submittal, Secise did not hold a Multiple Award Contract (MAC); however, both MPP JV partners, Don Selvy and Precise held separate MACs. This award is being made to Secise LLC via the Don Selvy MAC in accordance with 13 CFR 125.8(f) which provides that the procuring activity will execute a contract set aside or reserved for small business in the name of the small business partner to the joint venture (in this case, Don Selvy Enterprises, Inc.), but will identify the award as one to the small business mentor-protégé joint venture (in this case Secise, LLC).

AR, Tab 8, Task Order Re-Award at 1-2; see *also* AR, Tab 11, Initial Task Order Award (identifying DSE as the contractor).

The protester argues that the Navy’s award cannot stand because the Navy issued the task order to Secise even though the entity did not hold a SeaPort NxG contract. Comments & Supp. Protest at 7-8. The protester also argues that the record evidences a “significant disconnect between the identity of the entity that submitted the proposal”--Secise--“and that received the contract”--DSE. *Id.* at 3-5.

³ The SBA’s small business mentor-protégé program allows small or large business firms to serve as mentors to small business protégé firms to provide “business development assistance” to the protégé firms and to “improve the protégé firms’ ability to successfully compete for federal contracts.” 13 C.F.R. § 125.9(a), (b); see 15 U.S.C. § 644(q)(1)(C). One benefit of the mentor-protégé program is that a protégé and mentor may form a joint venture. 13 C.F.R. § 125.9(d).

The Navy does not contest the general rule that, where an agency awards IDIQ MACs like the SeaPort NxG contracts, orders may only be placed with the firms that received one of the contracts. See 10 U.S.C. § 3406; FAR 16.505(b); *Engility Corp.*, *supra* at 3. The agency, however, defends its award to Secise, offering a variety of arguments why the general rule does not apply under the circumstances.⁴

Most compelling, and sufficient to resolve this protest, is the agency's argument that Secise's proposal and award were consistent with a special term of the SeaPort NxG contract incorporated by reference in the solicitation. The contract provides that a contractor, "either through its parent, affiliates, subsidiaries, business units, etc. is permitted to hold one SeaPort NxG MAC in total," specifying that two firms are affiliates if "directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both." AR, Tab 3, SeaPort NxG Contract at 17 ("C.10.2 - One Prime Contract Per Company").⁵

The IDIQ contract term continues:

⁴ The Navy's primary argument is that Small Business Administration (SBA) regulations governing SBA's MPP JV program mean that an MPP JV like Secise was eligible for any award, including task orders, as long as DSE was qualified and eligible for award. COS/MOL at 14 (citing 13 C.F.R. § 125.9, What are the rules governing SBA's small business mentor-protégé program?). Pursuant to section 21.3(j) of our Bid Protest Regulations, our Office invited SBA to provide its views on the protest because the issues raised concern the application of regulations promulgated by SBA pursuant to its authority under the Small Business Act. In this connection, SBA disagrees with the Navy's understanding of the regulations. SBA Comments at 2 5.

SBA explains that the provision that an MPJV may seek any contract as a small business, "provided the protégé qualifies as small for the procurement," refers to the joint venture's qualifications as a small business. *Id.* at 2 (citing 13 C.F.R. § 125.9). Specifically, MPJVs qualify as small businesses based on the protégé's status alone, "in contrast to SBA's general rules for JVs, which allows JVs to submit offers for small business contracts only" if both mentor and protégé qualify as small businesses. *Id.* In other words, although SBA regulations contemplate that Secise would not be disqualified as an other-than-small-business for this task order set-aside, SBA regulations do not otherwise confer eligibility to Secise for a task order award as if the MPJV held all of the same contract rights and obligations of its protégé. We agree with SBA's analysis.

⁵ In the following section, consistent with this rule, the contract also states that a "Joint Venture and individual partners in the Joint Venture can only hold one SeaPort NxG MAC. If one partner of the Joint Venture holds a Prime MAC contract, then the Joint Venture entity cannot also hold a subsequent Prime MAC contract." AR, Tab 3, SeaPort NxG Contract at 17.

This rule does not prevent an affiliated company from being able to participate in SeaPort NxG. Any proposal submitted in response to a Task Order solicitation should be submitted in the portal through the account of the Prime MAC holder and the proposal should clearly identify the affiliate as the prime. Contractors are cautioned that the Prime MAC holder is the authorized and binding authority in any Task Order award.

All payment information and [past performance] ratings will flow through the Prime MAC holders and although the affiliate may hold a different size status/representation, the size and representations of the Prime MAC is what governs.

Affiliates must decide who will be the NxG Prime MAC holder and all other affiliates would then become subcontractors to that Prime MAC holder, even in the case of the subcontractor/affiliate performing 100 [percent] of the work. A Prime MAC holder may novate their SeaPort NxG contract to an affiliate through their cognizant DCMA [Defense Contract Management Agency] office however, it must be novated in its entirety - the base MAC contract AND any awarded Task Orders. Upon novation, the SeaPort NxG MAC contract would then maintain the size status or socio-economic status of the official Prime MAC holder.

Id. Secise invoked this contract term when submitting its proposal in the SeaPort NxG portal through DSE's account:

Secise, LLC (Secise), a Small Business Administration (SBA) approved Mentor Protégé Joint Venture between Precise Systems, Inc. and Don Selvy Enterprises, Inc. (DSE), is pleased to submit the enclosed proposal in response to the subject Solicitation [here].

Secise is submitting, as a Prime, under DSE's SeaPort-NxG to align with SeaPort NxG policy regarding Joint Ventures (JVs) indicating a single company may not have more than one SeaPort-NxG contract. Since DSE is the managing partner of the JV, DSE's contract is used as a medium to submit the Secise proposal. Secise is submitting a prime proposal on DSE's SeaPort account, and all subcontractors (including DSE and Precise) are submitting as subcontractors using DSE's SeaPort NxG contract, referenced above.

AR, Tab 16, Secise Cost Proposal at 3. The referenced contract number was identified as "DSE (Managing Partner): SeaPort NxG N00178-19-D-7533." *Id.* The Navy made award to Secise but executed the task order with the "Prime MAC holder" identified in the SeaPort NxG contract, "the authorized and binding authority in any [t]ask [o]rder award." AR, Tab 8, Task Order Re-Award at 1; AR, Tab 3, SeaPort NxG Contract at 17.

The protester contests the Navy's interpretation of the SeaPort NxG contract's language, arguing that the term does not allow the Navy to accept a proposal from Secise, effectuated through DSE's contract. Protester Comments on SBA Comments at 2 n.1. GTMR insists that it is "not challenging the terms of C.10.2, but rather the Navy's decision in this task order procurement to find Secise's proposal eligible for award" under that provision. Supp. Comments at 11 n.5. According to GTMR, although Secise could have been identified as "the prime" in the proposal under C.10.2 and consequently responsible for 100 percent of the work, C.10.2 requires that "affiliates must decide who will be the NxG Prime MAC holder and all other affiliates would then become subcontractors to that Prime MAC holder." In this context, the protester asserts that the proposal still must have been submitted by DSE itself with Secise as a subcontractor rather than a proposal submitted to the agency directly by Secise. *Id.*

Where a dispute exists as to a solicitation's terms, we begin by examining the plain language of the solicitation. *Point Blank Enters., Inc.*, B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 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.

GTMR argues that award to Secise is inconsistent with previous statements the Navy has made about the contract, and that we should not interpret the SeaPort NxG contract to allow "any affiliate of a SeaPort NxG contract holder to submit a proposal in the contract holder's name" because that "would yield unreasonable results." Comments & Supp. Protest at 10-11. The protester does not, however, explain why the proposal and award here were not permitted by the plain language of the solicitation.

That is, the solicitation incorporated by reference the contract provision stating that an affiliated company may "participate in SeaPort NxG" by submitting a proposal "through the account of the Prime MAC holder" that clearly identifies "the affiliate as the prime" but cautions that the Prime MAC holder will be "the authorized and binding authority in and Task Order award." AR, Tab 3, SeaPort NxG Contract at 17. Here, the proposal was submitted through DSE's SeaPort NxG portal account and identified the affiliate--Secise--as the prime. AR, Tab 16, Secise Cost Proposal at 3. GTMR's insistence that any proposal must have been submitted by DSE does not give any effect to this language providing for submission of a proposal by an affiliate "as a prime." GTMR's contrary interpretation of the solicitation is therefore not reasonable and does not provide a basis to upset the award.⁶ See *Desbuild Inc.*, *supra* at 5.

⁶ We note that the provision in question is neither a model of clarity nor artfully worded. The protester, however, does not allege that the provision, itself, is ambiguous, but rather that the ambiguity rests with which entity will be legal bound to perform the task order. Comments & Supp. Protest at 3. GTMR's argument, in this regard, is essentially a repetition of its position that as a general rule, the party submitting the proposal must be the same party that holds the IDIQ contract. *Id.* This special contract provision

(continued...)

Limitation on Subcontracting

Finally, GTMR asserts that, independent of Secise's eligibility to receive and perform the task order based on an affiliated company's SeaPort NxG contract, "because Secise's proposal indicated on its face that the awardee would violate" the contract's limitation on subcontracting clause (LOS), "Secise was ineligible for award." Comments & Supp. Protest at 5-7. The Navy responds that the protester has not demonstrated any facial violation of the clause. Supp. MOL at 11-16.

The SeaPort NxG contract includes the following limitation on subcontracting clause:

For Task Order solicitations with competition restricted for Small Businesses, Service-Disabled Veteran Owned Small Businesses, Women-Owned Small Businesses, 8(a) Businesses or HubZone Small Businesses, the Prime Contractor will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. A similarly situated entity is defined as one with the same small business program status as the prime contractor that qualifies for the award (See FAR 52.219-14 Dev 2021-O0008).

AR, Tab 3, SeaPort NxG Contract at 13. The clause cites, and is essentially the same limitation on subcontracting as, FAR clause 52.219-14. *Id.* (citing FAR clause 52.219-14).

As a general matter, an agency's judgment as to whether a small business will comply with the limitations on subcontracting clause is a matter of responsibility, and the contractor's actual compliance is a matter of contract administration, both of which are not subject to our review. *SumCo Eco-Contracting LLC*, B-409434, B-409434.2, Apr. 15, 2014, 2014 CPD ¶ 129 at 4; 4 C.F.R. § 21.5(a), (c). However, where a proposal, on its face, should lead an agency to conclude that an offeror has not agreed to comply with the subcontracting limitation, the matter becomes one of acceptability, which our Office will review. *DBI Waste Sys., Inc.*, B-408304, B-408304.2, Aug. 5, 2013, 2013 CPD ¶ 188 at 4.

The protester asserts that, assuming the task order was properly issued according to the SeaPort NxG contract's special term, DSE remains the SeaPort NxG contract holder responsible for compliance with the limitation on subcontracting. Comments & Supp. Protest at 7. According to GTMR, DSE would be precluded from paying "more than 50 [percent] of the amount paid by the government to it to firms that are not similarly situated," and any "work that a similarly situated subcontractor further subcontracts will

provides an exception to this general rule, providing a manner for an affiliate to submit a proposal by relying on the contract of the MAC holder. See AR, Tab 3, SeaPort NxG Contract at 17.

count towards the 50 [percent] subcontract amount that cannot be exceeded.” *Id.* at 6-7 (citing 13 C.F.R. § 125.6(a)(1)). In this respect, GTMR acknowledges that Secise--an MPP JV that carries the same small business program status as DSE--will perform [DELETED] percent of the effort. *Id.* at 7. The protester contends, however, construing compliance as a matter of DSE subcontracting the work to Secise and Secise’s teammates, the proposal shows on its face that more than half of the value of the contract will be paid to other than small businesses.⁷

Here, the protester acknowledges the awardee’s offer, on its face, proposes that Secise--an MPP JV that carries the same small business program status as DSE, the small business protégé--will perform [DELETED] percent of the effort. Supp. Comments at 7-8. Thus, the proposal is facially compliant with the limitations on subcontracting. The protester advances an argument that, essentially, asserts that the Navy should have gone beyond the face of the proposal to probe whether the proposed approach would truly comply with the limitation on subcontracting clause. *Id.* Thus, this is not a situation where the proposal, on its face, should have led the agency to conclude that the awardee did not agree to comply with the limitation. As such, we find no merit to the allegation. *WAI-Stoller Servs., LCC; Navarro Rsch. & Eng’g, Inc.*; B-408248.6 *et al.*, May 22, 2014, 2014 CPD ¶ 164 at 7 n.7 (denying protest where protester offered an alternative computation of workshare, but no evidence that should have led the agency to conclude that the proposal, on its face, indicated that the awardee would not comply with the limitation on subcontracting). The protest argument is therefore denied.

The protest is denied.

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General Counsel

⁷ Specifically, GTMR alleges:

Precise--the large business incumbent and ostensible mentor to DSE--will be performing \$[DELETED] of the \$67,264,791.93 contract, *i.e.*, [DELETED]%. That large amount, when combined with the [DELETED]% of the contract value to be performed by other subcontractors (including [DELETED], a large business), would have exceeded the 50% LOS restriction. Indeed, DSE is only slated to perform [DELETED]% of this task order (*i.e.*, \$[DELETED] of the total \$67,264,791.93).

Comments & Supp. Protest at 7.