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Decision

Matter of: 4K Global-ACC JV, LLC

File: B-423092

Date: January 15, 2025

Joey R. Floyd, Esq., Bruner, Powell, Wall & Mullins, LLC, for the protester.
Peter B. Ford, Esq., Eric A. Valle, Esq., and Kelly A. Kirchgasser, Esq., PilieroMazza, PLLC, for Roundhouse PBN - Tapa EC 2 JV, the intervenor.
Phillip T. Paradise, Esq., Department of the Army, for the agency.
Samantha S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's rejection of the protester's proposal is denied where the agency reasonably concluded that the protester's project labor agreement did not meet minimum requirements.

DECISION

4K Global - ACC JV, LLC (4K Global), a small business of Augusta, Georgia, protests the award of a contract to Roundhouse PBN - Tapa EC 2 JV (Roundhouse PBN), a small business of Warner Robins, Georgia, under solicitation No. W912HN24R3006, issued by the Department of the Army, Corps of Engineers (Corps) for building repairs. The protester contends that the agency unreasonably found the firm's proposal ineligible for award.

We deny the protest.

BACKGROUND

On August 4, 2024, the Corps issued the request for proposals (RFP) as a small business set-aside, using the procedures of Federal Acquisition Regulation (FAR)

part 15. Agency Report (AR) Tab 3, RFP at 1.¹ The agency sought proposals for hazards abatement and repairs of the barracks at Fort Moore, Georgia, including exterior and interior walls; windows and doors; plumbing; heating, ventilating, and air conditioning; electrical systems; and elevators. *Id.* at 3-4; Contracting Officer's Statement (COS) at 1.

The solicitation contemplated award of a single fixed-price contract with a maximum period of performance of 840 days. RFP at 1. The solicitation provided for award to be made on a lowest-price, technically acceptable basis. *Id.* Relevant here, offerors were required to submit "a Project Labor Agreement [(PLA)] in accordance with FAR provision 52.222-33 and FAR clause 52.222-34." *Id.* The solicitation advised that "[t]o be considered eligible for award, the Government will verify that each offeror has submitted a PLA that meets the minimum requirements outlined in FAR 52.222-33(c)." *Id.* at 8; *see also id.* at 14 (same under RFP's basis for award).

The agency received proposals from three offerors by the September 11 deadline for submission of proposals. COS at 1-2. The contracting officer, who served as the source selection authority (SSA), reviewed offerors' PLAs, and found that 4K Global's PLA did "not meet the minimum requirements" identified in FAR provision 52.222-33(c) and 4K Global's proposal was therefore "ineligible for award." AR, Tab 5, Source Selection Decision Document (SSDD) at 10-11. After finding Roundhouse PBN's proposal was technically acceptable and that the offeror's PLA met the minimum requirements, the agency awarded the contract to Roundhouse PBN as the lowest-price, technically acceptable proposal.

On September 28, the Corps notified 4K Global that its proposal was not selected for award because the firm's PLA "did not comply" with the requirements of the FAR. AR, Tab 6, Notification of Unsuccessful Offeror at 1-2. After receiving a debriefing, the protester filed this protest with our Office.

DISCUSSION

The protester challenges the agency's determination that the firm's PLA did not meet the minimum requirements for such an agreement. Protest at 2-6. The agency defends its conclusion, asserting that the Corps reasonably deemed 4K Global's proposal ineligible for award because the firm's proposed PLA did not meet the requirements specified in the solicitation. Memorandum of Law (MOL) at 2-11.

In reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency regarding a proposal's relative merits, as the evaluation of proposals is a matter within the agency's discretion. *Peraton, Inc.*, B-417088, B-417088.2, Feb. 6, 2019, 2019 CPD ¶ 190 at 5;

¹ Citations to the record are to the sequential Adobe PDF pagination. The agency amended the solicitation three times. Unless otherwise noted, citations are to the initial RFP at tab 3 of the agency report.

Del-Jen Educ. & Training Group/Fluor Fed. Sols. LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations, and adequately documented. *Management Sys. Int'l, Inc.*, B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 5. A protester's disagreement with the agency's evaluation judgments, without more, is insufficient to establish that an evaluation was improper or lacked a reasonable basis. *Lanmark Tech., Inc.*, B-408892, Dec. 19, 2013, 2013 CPD ¶ 295 at 5.

As noted above, the solicitation here specifically required all offerors to submit a PLA "in accordance with FAR provision 52.222-33 and FAR clause 52.222-34." RFP at 1. The referenced FAR clause defines a PLA as "a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project," entered into "prior to the award" and maintained "throughout the life of contract." FAR clause 52.222-34(a), (b). Whereas the FAR provision obligates offerors to "[n]egotiate or become a party to a project labor agreement with one or more labor organizations" and includes a subsection that specifies six requirements for any PLA, including that it "[b]ind the Offeror and subcontractors engaged in construction on the construction project to comply." FAR provision 52.222-33(b), (c).

Offerors were to submit a PLA as volume III of their proposals. RFP at 7. For that volume, offerors were to include a title page, table of contents, and a PLA. *Id.* The solicitation referred offerors to FAR provision 52.222-33 and FAR clause 52.222-34 "for definitions and requirements pertaining to the use of a PLA for this contract" and the solicitation's basis for award warned that "[t]o be considered eligible for award, the Government will verify that each offeror has submitted a PLA that meets the minimum requirements outlined in FAR 52.222-33(c)." *Id.* at 7-8.

In volume III of its proposal, the protester submitted an agreement titled "Project Labor Agreement Between United States Army Corps of Engineers And 4K Global - ACC JV LLC." AR, Tab 4c, 4K Global Proposal Vol. III at 4. Relevant here, 4K Global's PLA stated that the agreement "shall apply and is limited to all labor organizations who have negotiated or become a party to this Agreement, as well as all Contractors/Employer(s) performing Construction Contracts on the Project who have executed the Letter of Assent." *Id.* at 5. The PLA, however, did not identify any of those parties by name, and the agreement was signed by only one representative--an individual identified as "Vice President" of 4K Global. *Id.* at 8.

Reviewing the proposal, the SSA found that the protester's PLA did not comply with FAR provision 52.222-33(c) for several reasons. AR, Tab 5, SSDD at 10. The SSA explained that 4K Global's PLA did not meet the basic definition for such an agreement because it was "not signed by anyone other than the Offeror and makes no representation that any party--let alone a labor organization--has entered into the agreement or is bound by it." *Id.* Further, "[w]hile not listing all of the deficiencies which flow from the failure" to submit a pre-hire collective bargaining agreement with one or

more labor organizations, the SSA noted that 4K Global's agreement also did not meet the FAR requirement that the PLA "[b]ind the Offeror and subcontractors engaged in construction" because the agreement did not "identify any subcontractors who have agreed to be bound by it." *Id.* In addition, the SSA found that the PLA did "not identify one or more labor organizations or subcontractors that will become parties" and instead "appear[ed] to indicate on the cover page" that the PLA would be between 4K Global and the Corps. *Id.* at 10-11.

Challenging the agency's findings, the protester first contends that the PLA it submitted "'checks every box' under the FAR and absolutely meets the statutory requirements for a PLA." Comments at 1. The protester denies that the "plain language of the FAR" requires a "signed PLA," asserting that it requires only a draft PLA that the awardee would later negotiate with an unspecified labor organization or organizations. *Id.* at 2. According to the protester, the adequacy of a PLA "cannot be a basis to reject" the firm's proposal, because the PLA is an obligation during contract performance that 4K Global "acknowledged and accepted" with any proposal submission. *Id.* at 3, 4.

The Corps responds that the solicitation specifically and explicitly required the submission of a PLA "between itself [as offeror] and a labor organization," as part of the proposal. MOL at 5. According to the agency, 4K Global's PLA was inadequate under the solicitation--and the requirements of the incorporated FAR provision and clause--because there was no indication that the agreement was negotiated with, or agreed to by, a labor organization. *Id.*

Here, the solicitation specifically directed offerors to submit a PLA conforming to the requirements of sections 52.222-33 and 52.222-34 of the FAR. RFP at 1. The provision at 52.222-33 of the FAR obligates offerors to "[n]egotiate or become a party to a [PLA] with one or more labor organizations," including a requirement that the agreement "[b]ind the Offeror and subcontractors engaged in construction on the construction project to comply." FAR provision 52.222-33(b)(1); (c)(1). On this record, we find the agency reasonably rejected the protester's proposal based on the submission of a PLA that neither evidenced that 4K Global had negotiated, or become a party to, an agreement with any labor organization, nor identified any subcontractors who have agreed to be bound to comply with the PLA.²

Indeed, the protester's true argument appears not to be that the draft PLA it submitted met the solicitation's requirements, but that the solicitation should not have required a

² The protester also separately argues that the agency could have required a complete, signed PLA, but only by incorporating alternate versions of the same FAR provision and clause rather than the main versions. Comments at 2. To the contrary, the main provision and clause require all "offerors" to submit PLAs; Alternate I requires a PLA only from the apparently successful offeror and Alternate II requires a PLA only from the awardee. FAR provision 52.222-33; FAR clause 52.222-34.

specific, definite PLA.³ See Comments at 1-4. That is, the protester argues about the reasonableness of the solicitation's requirements.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. 4 C.F.R. § 21.2. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial submissions be filed before that time. 4 C.F.R. § 21.2(a)(1); see *AmaTerra Env't Inc.*, B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3.

Here, to the extent that the protester is arguing that the solicitation's requirements were unreasonable or that the Corps could have ensured that the awarded contractor met the labor requirements during performance in some other fashion, 4K Global was required to protest such alleged solicitation improprieties prior to September 11, the date proposals were due. See *ASRC Fed. Data Sols. LLC*, B-417655 *et al.*, Sept. 18, 2019, 2019 CPD ¶ 325 at 7. The protester, however, did not raise these allegations until after the agency made award. Therefore, these arguments are dismissed as untimely. 4 C.F.R. § 21.2(a)(1).

Turning to the SSA's other specific criticism that the protester's PLA seemed to indicate that it would be an agreement between the Corps and 4K Global rather than between labor organizations and the offeror, the protester asserts that the agency "ignores the actual language of the PLA." Comments at 2. The protester acknowledges that the cover page of the PLA referred to an agreement with the Corps, but 4K Global argues

³ For example, 4K Global argues:

The FAR only requires the contractor to negotiate for a resulting construction contract. . . . In its simplest terms, the PLA is an obligation and 4K must comply with the obligation. 4K has acknowledged and accepted this obligation and demonstrated compliance. It is not a matter for the Agency to deny the award of a project to 4K because the PLA has not been signed by all subcontractors, suppliers and labor organizations PRIOR TO THE AWARD. To impose this requirement upon 4K (and/or other Contractors) would be improper because 4K would be expected to enter into a PLA prior to being awarded a project contrary to the express requirement of the Solicitation. This is a flawed analysis by the Agency.

Comments at 2, 4.

the evaluation should have, instead, been based on the description of parties as provided in the agreement.⁴ *Id.*

In reviewing protests of alleged evaluations and source selections, our Office examines the record to determine whether the agency judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. *T-C Transcription, Inc.*, B-401470.2, Feb. 16, 2010, 2010 CPD ¶ 50 at 4. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. In this regard, an offeror must affirmatively demonstrate the merits of its proposal, which is at risk of rejection if the offeror fails to do so. *Id.*

Here, the SSA's concern about 4K Global's understanding of the appropriate parties to the PLA was based on the proposal's language describing the submission as a "Project Labor Agreement Between United States Army Corps of Engineers And" the protester. AR, Tab 4c, 4K Global Proposal Vol. III at 4. That there was another definition of parties to the agreement that did not refer to the Corps does not render the agency's concern unfounded. In other words, the protester cannot show that the agency's assessment is inconsistent with the firm's proposal. See *Wang Electro-Opto Corp.*, B-418523, June 4, 2020, 2020 CPD ¶ 187 at 6 (denying protest challenging evaluation where record did not support protester's assertion that agency misunderstood protester's proposal).

Finally, with respect to the agency's position that the solicitation required a PLA that had been negotiated (and signed by the parties), 4K Global argues in the alternative that "even if a signature were required by the Solicitation, the failure to obtain a signature would be a minor irregularity," such that the protester should have been "given the opportunity to cure." Comments at 2. In that same vein, the protester also contends that any language "misinterpreted" by the agency from the PLA is also a "minor irregularity" that the protester is entitled to cure. *Id.* at 3-4.

⁴ In particular, the protester contends the following language from Article 2.1 of the PLA informed the agency that 4K Global understood who the parties were to the agreement:

The Agreement shall apply and is limited to all labor organizations who have negotiated or become a party to this Agreement, as well as all Contractors/Employer(s) performing Construction Contracts on the Project who have executed the Letter of Assent, attached as Exhibit A to this Agreement (which is hereby incorporated herein by reference), whose names are subscribed hereto, and who have through their officers executed this Agreement.

AR, Tab 4c, 4K Global Proposal Vol. III at 5.

The protester's argument, in this regard, is premised on 4K Global's interpretation of the requirements of FAR part 14, which applies to contracting by sealed bidding.⁵ See Protest at 5-6. The competition here, however, was conducted pursuant to a separate and distinct approach under FAR part 15, contracting by negotiation. RFP at 1. Any definitions and obligations specific to sealed bidding, therefore, do not apply, and provide no basis to sustain the protest. See *Aerospace Training Sys. Partners, LLC*, B-419668, B-419668.2, June 22, 2021, 2021 CPD ¶ 243 at 3 n.5 (distinguishing between FAR part 14 and FAR part 15 acquisitions).

The protest is denied.

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General Counsel

⁵ Specifically, the protester relies on FAR section 14.405 (Minor informalities or irregularities in bids), which provides:

A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. The contracting officer either shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the Government.

Protest at 5 (citing FAR 14.405) (emphasis omitted).