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Decision

Matter of: MSC Industrial Direct Company, Inc.

File: B-416255

Date: July 12, 2018

Gregory R. Hallmark, Esq., and Elizabeth N. Jochum, Esq., Holland & Knight LLP, for the protester.

Tyler J. Mullen, Esq., and Alissa J. K. Schrider, Esq., General Services Administration, for the agency.

Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

Gregory R. Hallmark, Esq., Holland & Knight LLP, for the protester.

DIGEST

Agency reasonably rejected protester's quotation for failing to submit small business summary subcontracting report with its quotation where solicitation required vendors to submit the report and warned that failure to do so would result in rejection of the quotation.

DECISION

MSC Industrial Direct Company, Inc. (MSC), of Melville, New York, challenges the rejection of the quotation it submitted in response to request for quotations (RFQ) No. QSRA-RFQ-18001, issued by the General Services Administration (GSA) to establish a blanket purchase agreement (BPA) to provide and manage industrial product inventory at Warner Robins Air Logistics Complex. MSC asserts that the agency unreasonably rejected its quotation for failing to provide a summary subcontracting report (SSR) with its small business subcontracting participation plan.

We deny the protest.

BACKGROUND

GSA issued the solicitation pursuant to Federal Acquisition Regulation (FAR) § 8.405-3, to establish a BPA to provide industrial products and related in-store services for a tool room and issue point at Warner Robins Air Force Base. The solicitation was limited to vendors that are listed on GSA's Federal Supply Schedule 51V, Hardware Superstore,

and possess specific special item numbers (SIN).¹ Contracting Officer's Statement (COS) at 2-3.

The solicitation provided that the BPA would be established with the vendor that submitted the quotation that represented the best value to the government considering price and the following non-price factors, listed in descending order of importance: system interface capabilities; technical approach; past performance; and local and small business participation plan. AR, Exh. 3, RFQ, Amend. 01, § 12.4. The solicitation also included certain pass/fail criteria; any quotation that did not receive a pass on all of the criteria would be considered ineligible for award and the agency would conduct no further evaluation. Id. at § 12.3. For example, any quotation that did not contain the required narratives for any of the non-price factors would fail and be rejected. Id.

As relevant to this protest, with respect to the small business participation plan, the solicitation required vendors to submit a narrative addressing four elements:

- a) . . .the Vendor's commitment to provide meaningful subcontracting opportunities for [small businesses, veteran owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, socially disadvantaged businesses, and women owned small businesses]. . . .
- b)
- c) . . . a copy of their current approved [multiple award schedule (MAS)] subcontracting plan and their latest annual [SSR]. . . .and
- d) . . . information on subcontracting related problems encountered on previous contracts identified within the SSR, and corrective actions taken to resolve those [problems].

RFQ, Amend. 01, § 11.7.6. The solicitation stated the agency would evaluate the socio-economic merits of each quotation and the vendor's commitment to providing meaningful subcontracting opportunities to small business. Id. In addition, specific to the small business participation narrative, the solicitation provided that the government would review the narrative to ensure that each of the four required elements were provided, and that: "Quotations that do not provide all required elements will not be evaluated and will be determined not acceptable." Id. § 12.5.4.

The agency received a quotation from MSC by the February 26 due date. The agency reviewed the quotation and discovered that MSC did not provide a copy of its SSR with

¹ These are 105-001 (Hardware Store, Home Improvement Center, or Maintenance, Repair, Operations (MRO) - Store Front), 105-002 (Hardware Store, Home Improvement Center, or MRO – Catalog), and 105-003 (Hardware Store, Home Improvement Center, or MRO – Services). Agency Report (AR), Exh. 2, RFQ Notice.

its subcontracting plan. COS at 5. To ensure that it was not submitted in another part of the quotation, the agency provided MSC with a clarification question, asking MSC to point to the location in the quotation where the report was located. Id. In response, MSC confirmed that the report had not been submitted with the quotation, but stated it could be retrieved from the electronic subcontracting reporting system (eSRS) at www.eSRS.gov and had been previously provided to a GSA MAS contracting officer. AR, Exh. 7, Clarification and Response, at 2. MSC also attached a copy of the report to its response. Id. at 3-5. GSA rejected the quotation without further evaluating it because MSC did not include the SSR with its quotation, one of the four required elements of the small business subcontracting participation plan. Id. MSC protests that decision.

DISCUSSION

MSC argues that the agency unreasonably rejected its quotation for failing to submit the SSR. According to MSC, because the document is preexisting and was already in GSA's possession (on-line in the eSRS reporting system and submitted to a GSA MAS contracting officer) at the time quotations were submitted, no prejudice to other vendors would result if GSA accepted MSC's quotation. MSC therefore asserts that the agency should have waived MSC's failure to provide the report as a minor informality or irregularity. In this regard, MSC asserts that even if the agency needed the report to evaluate quotations, since it possessed the information, it was not a material requirement.

The agency states that the solicitation required all vendors to submit a copy of the SSR as part of their quotation and MSC failed to do so. Memorandum of Law (MOL) at 6. The agency argues that the solicitation required rejection of any quotation that failed to submit the SSR and that therefore the burden was on the vendor to submit the required information, and not on GSA to search for it outside of the quotation. Id. at 9. The agency contends that it acted in a reasonable manner when it rejected MSC's quotation. Id. 6-10.

Where, as here, an agency issues an RFQ to Federal Supply Schedule contractors under FAR subpart 8.4 and conducts a competition (see FAR § 8.405), we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. See GC Servs. Ltd Partnership, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 6. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotation; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4-5.

Here, the solicitation stated that vendors must submit the SSR with their small business participation plan. RFQ, Amend. 01, §§ 11.7.6, 12.5.4. The solicitation further advised vendors that the agency would reject a quotation without evaluating it if the quotation did not include the SSR. RFQ § 12.5.4. Since MSC did not submit the

SSR with its quotation, it was reasonable for the agency to reject MSC's quotation. See The Arbinger Co.--Advisory Opinion, B-413156.21, Oct. 14, 2016, 2017 CPD ¶100 at 4 (under FAR part 15 procurement, agency reasonably rejected proposal without evaluating it for failing to provide correct version of document where solicitation advised offerors that agency would reject proposal that did not include unaltered version of document). Accordingly, we deny this protest allegation.

MSC also asserts that the agency should have allowed it to provide the SSR during clarifications. However, there is no requirement in FAR subpart 8.4 that an agency seek clarifications or otherwise conduct discussions with vendors.² Aurotech, Inc., B-413861.4, June 23, 2017, 2017 CPD ¶ 205 at 9.

The protest is denied.

Thomas H. Armstrong
General Counsel

² In any case, by notifying offerors in the solicitation that a quotation would be rejected for failing to include the SSR, the agency put offerors on notice that the requirement was material. MSC, therefore, could not correct the defect through clarifications, but only through discussions. See The Arbinger Co.--Advisory Opinion, supra, at 5.