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Decision

Matter of: Signature Consulting Group, LLC

File: B-416570

Date: October 18, 2018

Jerry A. Miles, Esq., and Lan Jin, Esq., Deale Services, LLC, for the protester.
Erin V. Podolny, Esq., Linda Santiago, Esq, and Douglas Kornreich, Esq., Department of Health and Human Services, for the agency.
Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester is not an interested party to challenge alleged violations of the Small Business Administration's (SBA) 8(a) Business Development (BD) program where protester graduated from the 8(a) program and protester has not demonstrated that it would be eligible for award of requirement under the 8(a) program.
 2. Protest alleging bias and bad faith on the part of the agency is denied where protester does not support its allegations with convincing proof, and the record does not otherwise reflect bias or bad faith.
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DECISION

Signature Consulting Group, LLC, a small business located in Windsor Mill, Maryland, protests the terms of request for quotations (RFQ) No. 181823, issued by the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), for Medicare and Medicaid support services. Signature, which is a small business that recently graduated from the Small Business Administration's (SBA) 8(a) Business Development (BD) program, asserts that some of the anticipated work under the RFQ originates from a contract under the 8(a) program for which Signature is currently the prime contractor. The protester challenges the agency's decision to remove this work from the 8(a) program, asserting that the agency's actions violated procurement regulations and were in bad faith.

We dismiss in part and deny in part the protest.

On September 25, 2013, Signature was awarded a contract by CMS for the Physicians Quality Measures Management (PQMM) program (contract No. HHSM-500-2013-

00177C), via a competitive 8(a) source selection under the SBA's section 8(a) program. Signature was completing its final option year of the contract at the time of this protest, but graduated from the 8(a) program on February 23, 2017.¹ CO Statement at 2.

Thereafter, in March 2018, CMS developed the instant requirement, entitled "Quality Measures Management and Support" (QMMS).² The contracting officer explains that the QMMS requirement is intended "to manage the measure and improvement activity selection process for MIPS implementation." Id. at 1-2.

On April 27, 2018, CMS posted a Sources Sought Notice (SSN) for support services for the QMMS requirement on the Federal Business Opportunities website (available at www.FBO.gov) to determine the availability of large and small businesses to perform work under the selected North American Industry Classification System (NAICS) code 541690 (Other Scientific and Technical Consulting Services), with a size standard of \$15.0 million. AR, Tab 6A, Sources Sought Notice, at 1-5. Respondents were asked to demonstrate their understanding and ability to perform 11 capability requirements outlined in the SSN, as well as to provide a list of their current General Services Administration (GSA) schedule contracts and CMS internal indefinite-delivery, indefinite-quantity (IDIQ) contracts appropriate to the SSN and under which the company is a prime contractor. Id.

CMS received 23 timely responses to the SSN, 17 of which were from small businesses, including a response from Signature. CO Statement at 5; AR, Tab 7, QMMS SSN Evaluation. The agency determined that six of the respondents were at

¹ As relevant here, Signature's PQMM contract provided contractor support for the Physician Quality Reporting System (PQRS). Id. at 3. The PQRS was a voluntary reporting program that encouraged eligible medical professionals to report information on the quality of patient care to Medicare, and provided incentive payments to clinicians based on that reporting. Id. at 1; Agency Report (AR) at 5. Thereafter, Congress passed the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), Pub. L. No. 114-10, title I, § 101, 129 Stat. 87, 89 (Apr. 16, 2015). As a result of MACRA, the methodology for reimbursement of clinicians by Medicare changed from a program that provided incentive payments based on reporting (a pay for reporting system), to a system which rewards value of patient care (a pay for performance system). Id.; AR at 4-5; Contracting Officer (CO) Statement at 3. In addition, as relevant here, MACRA set the PQRS to sunset in 2016. The contracting officer explains that, due to the sunset, Signature's PQMM contract provided for the last payment adjustments under PQRS for 2018. Id. To comply with MACRA, CMS created a new Quality Payment Program (QPP), under which the PQRS reporting system was transitioned to a new Merit-based Incentive Payment System (MIPS). Id. at 1.

² The contracting officer explains that, in considering the appropriate acquisition strategy for the QMMS requirement, it was determined that the QPP dictated the need for a new contract because the specific requirements had not been performed previously under any CMS contract. Id. at 4.

least “overall partially capable.” *Id.* The agency explains that the capability statements of these companies “listed a range of CMS internal IDIQ[s] and GSA schedule and Government Wide Acquisition Contracts [GWAC],” but that, after researching the various contracting vehicles, the agency concluded that GSA’s Professional Services Schedule (PSS), Business Consulting Solutions, under the special item number (SIN) 874-1, Integrated Consulting Services, “was the most appropriate and streamlined vehicle to procure the services of the QMMS.” CO Statement at 6. The contracting officer further explains that, five out of the six respondents found at least overall partially capable were on the GSA PSS under SIN 874-1. *Id.* Accordingly, on June 20, 2018, the agency issued the RFQ for the QMMS requirement. This protest followed.

DISCUSSION

Signature argues that the work anticipated under the RFQ originates from Signature’s PQMM contract, which was awarded under the SBA’s 8(a) program. Signature therefore contends that the agency’s issuance of the RFQ outside of the 8(a) program violates 13 C.F.R. § 124.504(d)(1). The protester also asserts that agency officials were biased and/or acted in bad faith in transitioning the PQMM requirement to a large contractor.³ For the reasons discussed below, we conclude that the protester is not an interested party with regard to the first allegation.⁴ As for the second argument, we find

³ In the protest, Signature also argued that the agency’s failure to set aside the task order for small businesses violates the “rule of two” under Federal Acquisition Regulation (FAR) § 19.502-2(b). Protest at 8. After Signature submitted its protest, CMS filed a detailed request for partial dismissal of the protest. As relevant here, the agency argued that Signature’s protest ground alleging that the agency violated the “rule of two” should be dismissed as legally insufficient because the requirement does not apply to GSA Federal Supply Schedule procurements conducted under FAR section 8.405. Agency Dismissal Request at 3. Our Office established a deadline of 5:30 p.m. on July 20 for the protester to respond to the agency’s dismissal request. Although Signature submitted a response to the dismissal request, the protester elected not to respond to the agency’s argument requesting dismissal of Signature’s “rule of two” protest ground. Protester’s Response (July 20, 2018), at 1 n.1. Where, as here, an agency submits a detailed response to a protester’s allegations and the protester fails to timely rebut or otherwise challenge the agency’s arguments, we deem the protest allegations abandoned. *See enrGies, Inc.*, B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 4. Similarly, Signature’s protest asserted that the agency improperly bundled contract requirements without reasonable justification, Protest at 9, and although CMS provided a detailed response to this argument in its report, Signature failed to rebut or otherwise substantively address the agency’s response in its comments. As a result, we view these contentions as abandoned. *Enterprise Sols. Realized, Inc.; Unissant, Inc.*, B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201 at 9 n.6.

⁴ Although this decision does not address all of the protester’s arguments in detail, we have considered each and find that none provides a basis to sustain the protest.

no evidence of bias or bad faith by the agency. The protest grounds are therefore dismissed in part and denied in part.

Interested Party

As an initial matter, CMS argues that Signature's protest ground alleging that it was improper for the agency to remove the PQMM requirement from the 8(a) program should be dismissed because Signature does not qualify as an interested party to raise this argument. Specifically, CMS contends that, because the protester's argument concerns a procurement action under SBA's 8(a) program, and the protester has graduated from the 8(a) program, Signature is not an interested party to raise this protest allegation.

Signature acknowledges that it graduated from the 8(a) program. The protester asserts, however, that it retains its 8(a) status, despite graduating from the program, because it continues to hold two 8(a) multiple-award, IDIQ contracts under which it is eligible to receive task orders under the 8(a) program.⁵ In this regard, the protester maintains that, because it is eligible to receive task orders under these two 8(a) contracts, it is an interested party to challenge the agency's removal of the requirement from the 8(a) program.

The agency responds that the two 8(a) contract vehicles identified by Signature are solely for information technology (IT) services, and therefore not suitable for the QMMS requirement (which is for non-IT related services). Supp. Dismissal Request at 2. In this regard, the agency points out that, even if the requirement were under the 8(a) program, it would not be properly within the scope of either of the two 8(a) contracts for which Signature is eligible. Accordingly, the agency maintains that Signature is not an interested party to challenge the 8(a) program here. We agree.

Under the bid protest provisions of the Competition in Contracting Act of 1984, only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit of the relief sought by the protester, and the party's status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. Id.

⁵ Specifically, Signature maintains that it holds the CMS Strategic Partners Acquisition Readiness Contract (SPARC) and the 8(a) Streamlined Technology Application Resource for Services (STARS) II contracts.

As mentioned above, Signature has graduated from the 8(a) program and therefore, is no longer an 8(a) contractor eligible to receive contracts under the 8(a) program. Generally, a firm that is no longer eligible to receive 8(a) contracts is not an interested party to challenge an agency's decision not to include a requirement in the 8(a) program. See Interoperability Clearinghouse, B-416001, Mar. 12, 2018, 2018 CPD ¶ 108 at 2. In addition, although the protester asserts that it remains eligible to receive task orders under the 8(a) program under two 8(a) IDIQ contracts, the protester does not argue or make any attempt to demonstrate that the agency would be in any way required to procure the instant QMMS requirement under either of these two contract vehicles if the requirement were under the 8(a) program.

CMS states that the QMMS requirement is not within the scope of either of the two 8(a) contracts. In this regard, as noted above, the agency conducted market research during its acquisition planning for the instant requirement and concluded that the most appropriate NAICS code for the requirement was 541690 (Other Scientific and Technical Consulting Services). CO Statement at 4. The contracting officer explains that he selected this particular NAICS code because "the predominance of the [QMMS] work relates to [Human Centered Design (HCD)] methodologies that will be used to enhance clinicians' and vendors' experiences in using QPP quality measure specifications and flows."⁶ Id. In addition, the contracting officer explains that, in selecting the appropriate contract vehicle for the procurement, he specifically considered whether the QMMS work could fit within the scope of the two 8(a) program IDIQ contracts now identified by Signature, but concluded that the QMMS work did not fit within the scope of either contract because both focused on "IT services."⁷ Id. at 5-6.

Although Signature disagrees with the agency, there is no evidence to indicate that, if the requirement were in the 8(a) program, the agency would procure it using one of the two 8(a) contract vehicles for which Signature is eligible. We have consistently explained that contracting agencies have broad discretion to determine their needs and the best way to meet them, and the selection of a contract type (or vehicle) is the responsibility of the contracting agency. See URS Fed. Support Servs., Inc., B-407573, Jan. 14, 2013, 2013 CPD ¶ 31 at 4. Nothing presented by the protester or in our review causes us to question the reasonableness of the agency's discretion as presented here.

⁶ Specifically the contracting officer explains that "QMMS work relating to maintenance and support of quality measures using HCD methods analytic services . . . falls within the description of this NAICS code," which provides: "This industry comprises establishments primarily engaged in providing advice and assistance to businesses and other organizations on scientific and technical issues (except environmental)." Id. at 4.

⁷ For example, the contracting officer explains that the CMS SPARC "is an IT IDIQ [contract] to provide strategic, technical, and program management guidance and support services, to facilitate the modernization of CMS business processes and supporting systems and procure IT System development services, from end to end." Id. Similarly, he notes that "the 8(a) STARS II GWAC" is a "contract[] to procure IT services." Id. at 6.

In these circumstances, and where Signature is not an 8(a) contractor, we conclude that the protester has not demonstrated that it would be eligible for award of this requirement under the 8(a) program, and therefore, the protester is not an interested party for the purposes of challenging the alleged 8(a) program violations here. Accordingly, this protest ground is dismissed.

Bad Faith

Next, the protester argues that the contracting officer's representative (COR) for Signature's PQMM contract and the contracting officer for the instant RFQ were biased in favor of another company--a large contractor. In support of this contention, the protester asserts that the COR attempted to transition the final option year work of Signature's PQMM contract to the large contractor. Protest at 10. The protester also contends that the CO subsequently issued the instant solicitation for the "same" work under the GSA schedule contract on an unrestricted basis, without SBA prior approval, without regard for the rule of two, and in an attempt to bundle the effort, in favor of the large contractor. Id. at 10.

Government officials are presumed to act in good faith, and a protester's contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not consider allegations based on inference, supposition or unsupported speculation. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8.

Here, although the agency did consider alternatives for the work to be performed during the final option year of Signature's PQMM contract, the COR explains that this was in response to concerns about Signature's performance. COR Declaration (Sept. 8, 2018), at 5-6. The contracting officer states that he did not solicit the large contractor to perform this work. CO Statement at 4. In any event, the record reflects, and the protester does not dispute, that this work has remained on Signature's PQMM contract. Id. at 3; Comments at 3. With regard to the instant solicitation, as noted above, the CO conducted market research to consider the availability of both large and small businesses. As further detailed above, based on this market research, the CO documented an acquisition strategy in support of a solicitation under the GSA PSS. Id. The protester has failed to produce credible evidence of bias or bad faith on the part of any agency officials.

The protest is dismissed in part and denied in part.

Thomas H. Armstrong
General Counsel