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Decision

Matter of: Point Blank Enterprises, Inc.

File: B-411839; B-411839.2

Date: November 4, 2015

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DIGEST

Protest that agency acted improperly in awarding indefinite-delivery/indefinite-quantity contracts to three offerors when one of the offerors was proposed to furnish at least one significant component to the other two is denied where the solicitation provision in question, that no offeror may receive more than one award, did not on its face preclude a prime contractor from also serving as a subcontractor to another awardee.

DECISION

Point Blank Enterprises, Inc., of Pompano Beach, Florida, protests the Department of the Army, Army Materiel Command's award of contracts to Bethel Industries (Bethel), of Jersey City, New Jersey, Hawk Protection, Inc. (Hawk), of Pembroke Pines, Florida, and KDH Defense Systems, Inc. (KDH), of Eden, North Carolina, under request for proposals (RFP) No. W91CRB-15-R-0030, for torso and extremity protection modular scalable vests. Point Blank asserts that the Army's evaluation of Point Blank's subcontracting plan was unreasonable, and that the three award decisions otherwise were improper.

We deny the protest.

BACKGROUND

The RFP, issued on May 15, 2015, requested proposals for the supply of torso and extremity protection modular scalable vests for integration into the soldier protection system. RFP at 6. The required modular scalable vests are to include a low profile vest, covered in camouflage cloth, with four soft armor panels (front, back and two side panels) that can be inserted into a tactical outer carrier to accommodate hard armor protective inserts. Id.

The RFP provided that the agency “may award up to three (3) IDIQ [indefinite-delivery/indefinite-quantity (ID/IQ)] FFP [firm-fixed-price] contracts to the responsible offeror(s) whose proposal represents the lowest priced, technically acceptable (LPTA) offer(s)” RFP at 68. The RFP indicated that one of the three contracts would be awarded to a small business, but that the set-aside would be dissolved if no small business offer met the solicitation’s criteria. Id. The RFP further stated that “[n]o offeror may receive more than one (1) award.” Id.

The RFP provided that to be considered for an award, an offeror’s proposal needed to receive a rating of acceptable under the following five factors: technical, workmanship, quality assurance, small business subcontracting, and delivery. RFP at 68. If the proposal was deficient under any of the factors, it would be rejected. Id. With respect to the small business subcontracting factor, the RFP required that large businesses submit a small business subcontracting plan, which was to be incorporated into any resulting contract. RFP at 63. The solicitation indicated that the required elements of the subcontracting plan were set forth in Federal Acquisition Regulation (FAR) § 52.219-9 and Defense Federal Acquisition Regulation Supplement (DFARS) § 252.219-7003, and that the subcontracting plan would be evaluated in accordance with Army Federal Acquisition Regulation Supplement (AFARS) Appendix DD-Subcontracting Plan Evaluation Guide. RFP at 63, 70-71. The Army reserved the right to make award without holding discussions. Id. at 68.

The Army received five proposals in response to the solicitation, including proposals from Bethel, Hawk, KDH and the protester. Agency Report (AR), Tab 2, Technical Evaluation, at 1. While the Army evaluated the proposals submitted by Bethel, Hawk, and KDH as acceptable under all of the evaluation factors, the agency found Point Blank’s proposal to be acceptable under only four of the five evaluation factors: technical, workmanship, quality assurance and delivery factors. Id. at 2. The agency evaluated Point Blank’s subcontracting plan, required because it was a large business offeror, as unacceptable because it did not meet all 13 requirements outlined in AFARS Appendix DD. AR, Tab 3, Subcontracting Plan Evaluation, at 3; Tab 5, Price Negotiation Memorandum, at 11. The Army awarded contracts to the three lowest-priced, technically acceptable offerors, Bethel, Hawk and KDH. AR, Tab 5, PNM at 13-15. (Point Blank was the fourth lowest-priced offeror. Id. at 13.) After being notified of the awards, Point Blank filed this protest with our Office.

DISCUSSION

Point Blank raises various challenges to the award of contracts to Bethel, Hawk and KDH, as well as to the evaluation of Point Blank's subcontracting plan. We have reviewed each of the allegations and find that none furnish a basis to sustain the protest. We discuss several of Point Blank's arguments below.¹

As an initial matter, Point Blank asserts that the award of contracts to Bethel, Hawk and KDH was contrary to the RFP's requirement that no offeror could receive more than one award. In this regard, the protester argues that there is significant commonality between the technical approaches of the three awardees. Specifically, the Price Negotiation Memorandum indicated that Bethel would manufacture the vest carrier components and subcontract the soft ballistics manufacturing to KDH; KDH would manufacture the entire vest and, if required, would subcontract the carrier manufacturing to two small businesses (Bethel and Savannah Luggage (Savannah)); and Hawk would subcontract the entire effort to three small businesses, KDH, Savannah and Bethel, with KDH performing the soft ballistics manufacturing. AR, Tab 5, Price Negotiation Memorandum, at 14-15.²

Point Blank argues that the three awards actually result in one award to KDH in violation of the terms of the solicitation because KDH will provide the ballistic inserts under all three awarded contracts and will also provide the carrier under at least two of the contracts. Point Blank contends that as a result of its role as a subcontractor

¹ Point Blank had argued that Hawk's proposal failed to comply with the Berry Amendment or Buy American Act (BAA) because Hawk is based in Northern Ireland. Protest at 11-12. The Army responded by stating that all modular scalable vest manufacturers are located in the United States; the System for Award Management indicated that Hawk has a location in Florida; and the agency will assess compliance with the Berry Amendment and BAA through post-award validation. Combined AR/Contracting Officer (CO) Statement at 8-9. Point Blank failed to address the Army's response to this protest allegation and therefore we consider this protest issue to have been abandoned and we dismiss it. See The Big Picture Company, Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218 at 5.

² While the technical evaluation documentation indicated that KDH would produce the carrier and soft ballistic inserts for Bethel, Hawk and KDH, AR, Tab 2a, Bethel Technical Evaluation, at 6; Tab 2d, Hawk Technical Evaluation, at 6; Tab 2e, KDH Technical Evaluation, at 6, the Army has explained that the technical evaluation form was incorrect and that the price negotiation memorandum correctly stated that Bethel would manufacture the carrier, while KDH would manufacture the soft ballistic inserts for Bethel. Supp. Combined AR/CO Statement at 8; see AR, Tab 5, Price Negotiation Memorandum, at 14.

to the other two offerors, KDH will control the pricing of the vests. The protester further asserts that its contentions are supported by similarities in the wording or other details of the proposals, and by the fact that KDH received the award for the first delivery order. Comments & Supp. Protest at 6-15.

In response, the Army explains that while the RFP restricted the number of awards an offeror could receive as a prime contractor, it did not place any restrictions on the number of awards an offeror and prime contractor could receive as a subcontractor. Combined AR/CO Statement at 6; Agency Response to Request for Additional Information at 4. Further, in response to Point Blank's claim that KDH will control the pricing of the vests, the agency points out that the awardees will be able to compete with each other at the task order level on the basis of many other factors (e.g., other components of the vests, materials, overhead, fringe benefits, and general and administrative expenses),³ Combined AR/CO Statement at 7, and, in any case, the awardees could later use a different soft armor ballistic insert provider so long as the new vest, with the new provider, meets the first article testing requirements before beginning production, Supp. Combined AR/CO Statement at 7; RFP at 22 ("Any change in the production of the approved First Article must be reported in writing to the [contracting officer] and the [contracting officer's representative] for determination if a new [first article test] is required.").

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Indus. for the Blind, Inc., B-409528.35, B-409528.36, Dec. 3, 2014, 2014 CPD ¶ 360 at 5; Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2; Fox Dev. Corp., B-287118.2, Aug. 3, 2001, 2001 CPD ¶ 140 at 2. Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. ITT Electronic Sys. Radar, Reconnaissance & Acoustic Sys., B-405608, Dec. 5, 2011, 2012 CPD ¶ 7 at 7.

Here, we agree with the Army that there was nothing on the face of the solicitation to support the protester's interpretation. As noted, the RFP simply stated that: "No offeror may receive more than one (1) award." RFP at 68. Whatever the agency's intent may have been in adopting such a provision, the plain language of the solicitation only precluded an offeror from receiving more than one award as a prime contractor, but did not preclude a prime contractor from also serving as a subcontractor to another awardee. In this case, Point Blank has not shown the awardees to be affiliated, and thus the Army did not violate the literal terms of the

³ In this regard, we note that the three awardees offered different unit prices and total price. AR, Tab 9, Bethel Solicitation Documentation, at 5-6; Tab 7, Hawk Price Factor, at 5-6; Tab 10k, KDH Price Factor, at 5-6.

solicitation because it issued three awards to three different, unaffiliated businesses.⁴

Finally, Point Blank challenges the evaluation of its subcontracting plan as unacceptable. In this regard, the Army assigned a deficiency to Point Blank's proposal because it found that Point Blank's plan lacked three elements that were required by the RFP pursuant to AFARS Appendix DD-Subcontracting Plan Evaluation Guide. Combined AR/CO Statement at 4. Point Blank asserts that its proposed subcontracting plan met the substantive requirements of the regulations. Comments & Supp. Protest at 3-5.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. GeoNorth LLC, B-411473 et al., Aug. 6, 2015, 2015 CPD ¶ 247 at 7. Here, even if the agency had assigned the protester's proposal an acceptable rating under the small business subcontracting factor, it would not have changed the fact that Point Blank was at best fourth in line for award because it submitted the fourth lowest-priced proposal. In this regard, the RFP stated that the agency would award a maximum of three contracts. RFP at 68. Therefore, the protester has not demonstrated that, if this protest ground were

⁴ Point Blank further argues that the awards to Bethel, Hawk and KDH violated FAR § 16.504(c)(1)(ii)(A)(4), because the Army failed to evaluate the ability to maintain competition among the three awardees at the order level. Protest at 11; Comments & Supp. Protest at 12-13. That FAR section requires that during acquisition planning, the "contracting officer should consider . . . when determining the number of contracts to be awarded: . . . The ability to maintain competition among the awardees throughout the contracts' period of performance." FAR § 16.504(c)(1)(ii)(A)(4). Here, the Army determined during acquisition planning that the agency would make up to three awards. RFP at 68. Point Blank has not shown, nor do we see any basis for concluding, that the agency's decision when drafting the solicitation to make up to three awards was inconsistent with maintaining competition at the order level throughout the period of performance.

sustained, it would be in line for award. Under these circumstances, we conclude that Point Blank has not demonstrated that it was prejudiced.⁵

The protest is denied.

Susan A. Poling
General Counsel

⁵ The protester also appears to argue that the solicitation envisioned that the agency would make award to at least one large business. Protest at 10; Comments & Supp. Protest at 2, 15. However, the plain language of the solicitation provides no support for the protester's position. Rather, the RFP stated that: "One (1) of the three (3) contracts awarded will be made to a Small Business in accordance with the evaluation criteria and basis of award." RFP at 68. The Army evaluated the proposals and determined that the three lowest-priced, technically acceptable proposals were submitted by small businesses. We find nothing in the solicitation, and the protester has identified nothing, that indicates that the solicitation nevertheless required the agency to make award to at least one large business.