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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Solar Plexus, LLC

File: B-402061

Date: December 14, 2009

Mary Hamilton for the protester.

Heather M. Self, Esq., Department of Agriculture, for the agency.

Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee lacked allegedly required state registration is dismissed where the solicitation did not require compliance with such requirements to be demonstrated prior to contract award.

DECISION

Solar Plexus, LLC, of Missoula, Montana, protests the award of a contract to Oasis Montana, Inc., of Stevensville, Montana, by the Department of Agriculture, U.S. Forest Service, under request for proposals (RFP) No. AG-03R6-S-09-0076, for the supply and installation of three separate solar-powered systems in Missoula, Montana.

We dismiss the protest.

The agency issued the RFP on June 4, 2009, for three separate solar-powered systems to be installed on federal property at the Missoula Technology Development Center (MTDC)/Aerial Fire Depot (AFD) compound in Missoula, Montana. The successful offeror was required to supply:

1. One 40 kW photovoltaic (PV) system at MTDC
2. One 2.2 kW PV system at the AFD Visitor's center, and
3. One 20 solar-tube water preheat system for domestic hot water at MTDC with a 120 gallon storage tank.

Contracting Officer's Statement at 1. The RFP stated that award would be made on the basis of the offer most advantageous to the government, price and other factors

considered. RFP at 51. The RFP also advised offerors that technical factors and past performance, when combined, were twice as important as price. Id. at 52.

After the initial proposals were evaluated by the technical evaluation board, the contracting officer established a competitive range consisting of the five highest-rated proposals, including the proposals submitted by Solar Plexus and Oasis Montana. The contracting officer then conducted discussions with these five firms. After reviewing the offerors' responses to the discussion questions, the TEB ranked the offerors, with the two highest-rated firms (one of which was Oasis Montana) receiving equal ratings. Contracting Officer's Statement at 2. Of the two highest-rated firms, Oasis Montana submitted the lower price, and the award was made to Oasis Montana on August 28.

Unsuccessful offerors were notified of the award on August 31, however, this notice contained incorrect information about the award amount. This information was corrected when the award notice was posted on the Federal Business Opportunities website on September 10. Solar Plexus filed an agency-level protest on September 14, which the agency denied on September 28. This protest was filed on October 6.

Solar Plexus alleges that the award was improper because Oasis Montana is not a registered construction contractor and, according to Solar Plexus, Montana law requires a company to be registered as a construction contractor in order to complete the installation of the solar-powered systems sought under the RFP. Solar Plexus asserts that the award is therefore in violation of the RFP, which states that "[t]he Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract." RFP at 41. Solar Plexus also cites the RFP's "Permits and Responsibilities" clause, Federal Acquisition Regulation § 52.236-7, which states that "[t]he Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work." Id. at 43.

The protester's arguments provide no basis to sustain the protest. Although the RFP calls for compliance with state law through its "Permits and Responsibility" and other similar clauses, normally, general solicitation provisions mandating that the "contractor" comply with the requirements of state laws, codes, and regulations do not require that a bidder or offeror demonstrate compliance prior to award. Mid-America Mgmt. Servs., Inc., B-244103, June 5, 1991, 91-1 CPD ¶ 537 at 1-2. Rather, compliance with applicable state or local requirements is a performance requirement that may be satisfied during contract performance and does not affect the award decision except as a general responsibility matter.¹ HAP Constr., Inc., B-278515, Feb.

¹ Affirmative determinations of responsibility are largely committed to the contracting officer's discretion, and our Office will not consider a protest challenging
(continued...)

9, 1998, 98-1 CPD ¶ 48 at 2-3. Whether Oasis Montana ultimately complies with the requirements of the RFP is therefore a matter of contract administration which we will not review. 4 C.F.R. § 21.5(a). As such, Solar Plexus' arguments provide us with no basis to question the agency's award decision.

The protest is dismissed.

Lynn H. Gibson
Acting General Counsel

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such determinations, except in circumstances not alleged or demonstrated here.
4 C.F.R. § 21.5(c).