



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Istituto di Medicina del Lavoro- Archimede

File: B-404650

Date: February 18, 2011

Dr. Fabio Gaudioso for the protester.
Wayne Wright, Esq., Department of the Navy, for the agency.
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Although an agency failed to make an award to a firm registered in the Central Contractor Registration (CCR) database prior to award as required by the solicitation, the agency reasonably invoked the exception to this requirement under Federal Acquisition Regulation § 4.1102(a)(5), which allows waiver of this requirement if the award is made to a foreign vendor and the work is to be performed outside the United States, and the agency determines that it was impractical for the awardee to obtain CCR registration prior to award.

DECISION

Istituto di Medicina del Lavoro – Archimede, of Siracusa, Italy, protests the award of a contract to NISANT SRL, of Motta Sant’Anastasia, Italy, under request for quotations (RFQ) No. N68171-10-T-0015, issued by the Department of the Navy, to provide an occupational medical physician to provide occupational and environmental health support services at the U.S. Naval Hospital, Sigonella, Italy. The protester argues that NISANT was not eligible for award because, at the time of award, NISANT was not registered in the Central Contractor Registration (CCR) database as required by the RFQ.¹

We deny the protest.

¹ The CCR is a database used to collect and manage contractor information, relevant to procurement and financial transactions, such as taxpayer identification numbers and electronic fund transfer information. See CCR Handbook (Feb. 2008) at 1.

The RFQ, issued on August 19, 2010, provided for the award of a purchase order for a base year with 4 option years. According to the solicitation, the source selection would be made on a best-value basis, considering technical, past performance and price as evaluation factors. The technical factor was evaluated on a pass/fail basis.

The RFQ required that “a prospective awardee” be registered in the CCR database “prior to award.” The RFQ went on to state that “[i]f the offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.” RFQ at 21.

Three quotations were received, but only the protester and the awardee were found technically acceptable. The two vendors were considered essentially equal in terms of past performance. Thus, price became the determining factor and the agency decided to make award to NISANT whose price was considerably lower than the protester’s.

Before making the award on September 30, the agency noted that NISANT was not yet registered in the CCR database, although it had a CCR registration pending.² The agency determined that an exception to the CCR registration requirement was applicable under Federal Acquisition Regulation (FAR) § 4.1102(a)(5), which provides for an exception to CCR registration for “[a]wards made to foreign vendors for work performed outside the United States, if it is impractical to obtain CCR registration.” On September 30, before making award, the agency completed a waiver of the CCR registration requirement, which was approved at the appropriate agency level, that certified that this was an award made to a foreign vendor for work to be performed outside the United States and that it was impractical to obtain CCR registration prior to award. Agency Report, Tab 1, CCR Registration Waiver (Sept. 30, 2010). The agency determined that it was impractical to delay award pending the completion of NISANT’s CCR registration because the agency required the uninterrupted delivery of these medical services, which were scheduled to end on September 30. In addition, NISANT had submitted the best value proposal whereas the protester’s proposal’s substantially higher price could not be determined fair and reasonable. Contracting Officer Statement at 2. The agency made award to NISANT on September 30. This protest followed.

The protester argues that NISANT was ineligible for award because the firm was not registered in the CCR prior to award.³

² NISANT began its CCR registration process on September 29.

³ The protester was registered in the CCR database at the time of award.

The solicitation did not require that contractors be registered in the CCR prior to the submission of quotations, but rather, required such registration prior to award. RFQ at 21; see Charter Envtl., Inc., B-297219, Dec. 5, 2005, 2005 CPD ¶ 213 at 4 (bid cannot be rejected as nonresponsive on the basis that the bidder had not yet registered in the CCR). While an agency is generally obligated to ensure that prospective contractors are registered in the CCR database before award, see FAR § 4.1102(a), the FAR provides a specific exception invoked by the agency that covers the present situation. FAR § 4.1102(a)(5). The protester does not deny that the required services could not be interrupted, but argues that award should have been made to the next vendor in line for award, that is, the protester. However, the regulations do not require this course of action, but allow the agency to exercise its discretion to make award to the best-value vendor, where, as here, the conditions of this exception are satisfied. We conclude that the protester has not shown that the agency's determination, that it was impractical for the awardee to obtain CCR registration prior to award, was erroneous.⁴

The protest is denied.

Lynn H. Gibson
General Counsel

⁴ In any case, the protester's price was determined to be not fair and reasonable and the protester was thus not in line for award.