



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: KAES Enterprises, LLC

File: B-408366

Date: August 7, 2013

Christopher Kaes, for the protester.
William D. Robinson, Esq., Bureau of Prisons, for the agency.
Cherie J. Owen, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that awardee's quotation failed to comply with the applicable limitations on subcontracting is denied where protester fails to identify anything on the face of awardee's quotation that should have led the agency to the conclusion that the awardee did not agree to comply with the relevant subcontracting limitation.

DECISION

KAES Enterprises, LLC, of Puyallup, Washington, protests the decision to place an order with Energy Pro OSC, LLC, of West Columbia, South Carolina under request for quotations (RFQ) No. RFQP05001300002, issued by the Department of Justice, Bureau of Prisons, for emergency generator maintenance. KAES Enterprises argues that Energy Pro's quotation should have been rejected for failure to comply with the limitation on subcontracting set forth at Federal Acquisition Regulation § 52.219-14.

We deny the protest.

BACKGROUND

The Department of Justice issued the RFQ on February 13, 2013, as a small business set-aside, and contemplated award of a fixed unit-price, indefinite-delivery requirements contract for a 1-year base period and four 1-year options. Because the solicitation was set aside for small businesses, it incorporated the limitations on subcontracting contained in FAR § 52.219-14. RFQ at 16.

As relevant here, the solicitation asked offerors to provide, as a percentage, the “total estimated amount of work under this contract that your firm will complete (excluding subcontractors).” RFQ at 36.

The agency received quotations from four small business vendors, including KAES Enterprises, LLC and Energy Pro OSC, LLC. In response to the solicitation’s instruction to identify the total estimated amount of work that the firm would perform without the use of subcontractors, Energy Pro’s quotation stated that it would perform 51 percent of the work itself. AR, Tab 6, Energy Pro Quotation, at 7. After evaluating quotations, the agency selected Energy Pro’s quotation for award. This protest followed.

DISCUSSION

KAES Enterprises contends that Energy Pro was ineligible for award because the firm failed to comply with the applicable limitation on subcontracting. Therefore, the protester contends, Energy Pro’s quotation should have been rejected as nonresponsible and unacceptable. Protest at 2. The protester argues that Energy Pro’s staff is unable to complete “at least 50 Percent” of the work on its own. In its comments, the protester analyzed the number of hours of work required under the contract versus the number of individuals employed by Energy Pro, and it concluded that, at most, Energy Pro staff could only be expected to perform 27 percent of the work required under the contract. Comments at 1-2. Therefore, the protester contends, Energy Pro’s proposal should have been rejected as noncompliant with the subcontracting limitation.

With regard to contracts for services, FAR § 52.219-14(c)(1) provides that “at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.” As a general matter, an agency’s judgment as to whether a small business offeror will be able to comply with this subcontracting limitation presents a question of responsibility not subject to our review. Dorado Servs., Inc., B-408075, June 14, 2013, 2013 CPD ¶ __ at 11; Spectrum Sec. Servs., Inc., B-297320.2, B-297320.3, Dec. 29, 2005, 2005 CPD ¶ 227 at 6. However, where a quotation, on its face, should lead an agency to the conclusion that an offeror has not agreed to comply with the subcontracting limitation, the matter is one of the quotation’s acceptability. See Dorado Servs., Inc., *supra* at 11; TYBRIN Corp., B-298364.6, B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 5.

Here, as set forth above, the solicitation asked offerors to provide, as a percentage, the “total estimated amount of work under this contract that your firm will complete (excluding subcontractors).” RFQ at 36. In response, the awardee’s quotation stated that it would perform 51 percent of the work itself. AR, Tab 6, Energy Pro Quotation, at 7. The protester has not identified any portion of the awardee’s quotation that, on its face, should have led the agency to the conclusion that Energy

Pro had not agreed to comply with the subcontracting limitation. Instead, the protester argues that Energy Pro did not provide any supplemental data to support its claim that the firm would perform at least 50 percent of the cost of the contract itself. Comments at 1. However, it is the protester who bears the burden of demonstrating that the proposal should have led the agency to conclude that the awardee did not comply with this limitation; simply arguing that the awardee's quotation did not contain sufficient information to demonstrate whether the awardee will comply does not meet this burden. Dorado Servs., Inc., supra at 12. Finally, we note that the protester's arguments appear to rely on a misunderstanding of the FAR provision. The provision requires that at least 50 percent of the cost of contract performance incurred for personnel be incurred by the prime contractor. Thus, the protester's arguments regarding the number of hours of work to be performed by the prime contractor versus the subcontractor are unconvincing.

We find that there is nothing on the face of Energy Pro's quotation, nor has the protester directed us to anything on the face of Energy Pro's quotation, that evidences that the firm will not comply with the solicitation's subcontracting limitation provision.¹ As a result, we see no basis to conclude that the agency acted improperly in accepting Energy Pro's quotation.

The protest is denied.

Susan A. Poling
General Counsel

¹ To the extent that the protester challenges the agency's failure "to obtain cost or pricing data" to support the awardee's statement that it would comply with the limitation on subcontracting, Comments at 2, we find this to be an untimely challenge to the terms of the solicitation. With regard to demonstrating compliance with the limitations on subcontracting, the RFQ requested only that offerors specify the percentage of "total estimated amount of work under this contract that your firm will complete (excluding subcontractors)." RFQ at 36. If the protester believed that the RFQ should have required the submission of additional information in this regard, KAES Enterprises was required to raise that challenge prior to the time set for receipt of quotations. 4 C.F.R. § 21.2(a)(1) (2013).