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Decision

Matter of: Occam Solutions, Inc.

File: B-415422; B-415422.2

Date: January 9, 2018

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Lawrence J. Sklute, Esq., Sklute & Associates, for Zentech, an intervenor.
Meagan K. Guerzon, Esq., Small Business Administration, for the agency.
Gabriel D. Soll, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that an agency's amendment of a solicitation, issued after the closing time for vendors to submit an opt-in statement, waived a material requirement, and that the requirement precluded the protester from competing, is denied where the amendment did not meaningfully alter the requirement.

DECISION

Occam Solutions, Inc., an 8(a) small business of Herndon, Virginia, protests the manner in which the Small Business Administration (SBA) conducted a task order procurement under request for quotations (RFQ) No. SBAHQ-17-R-0001, for enterprise information technology security services, resulting in the issuance of a task order to Zentech, an 8(a) small business of Arlington, Virginia. The protester alleges that the agency failed to provide Occam a fair opportunity to compete for the task order, and that the SBA waived or relaxed a material requirement.

We deny the protest.

BACKGROUND

The RFQ was issued on June 29, 2017, via the General Services Administration's (GSA) e-Buy system to vendors holding GSA's 8(a) Streamlined Technology Acquisition Resources for Services II (STARS II) government-wide acquisition contract. Memorandum of Law (MOL), at 2. The solicitation sought quotations to provide various information technology security services to support the SBA's Office of the Chief

Information Officer. RFQ at 2. The RFQ announced that the task order would be issued to the responsible vendor that offered the best value to the government, considering price and technical factors. Id. at 82. As relevant here, the solicitation stated that only quotations with the highest ratings and “no weaknesses or deficiencies” would be eligible for award. Id. at 94.

The RFQ announced that the procurement would be conducted following a two-stage approach. Id. at 82. Stage one required vendors to submit a formal statement to inform the contracting officer of their affirmative interest in the procurement. Id. at 83. The solicitation stated that only vendors that provided this “opt-in” statement would be included in subsequent solicitation activities, and that failure to respond would be considered an “opt-out.” Id. The RFQ further required that all opt-in statements “certify to the SBA that [the vendor’s] [t]echnical [p]roposal will include a formal subcontracting relationship with a Trusted Internet Connection (TIC) compliant provider or TIC Access Providers (TICAP).”¹ Id.

The opt-in responses were due July 18, 2017. Agency Report (AR), RFQ, Amend. 1, at 83. Occam did not submit a response. MOL at 2. The contracting officer created a list of vendors that submitted opt-in statements and considered whether the statements included the certification noted above. MOL at 2; AR, Tab 11, List of Opt-In Responses. On July 25, the SBA issued an amendment to the RFQ only to those vendors that had submitted opt-in statements. MOL at 2. This amendment, among other changes, clarified how the SBA intended to evaluate vendors’ quotations that failed to include the required certification with regard to subcontracting with a TIC-compliant or TICAP provider. Id.; AR, Tab 13, RFQ, Amend. 02.

In that regard, Amendment 2 added the following language to the description of stage one:

If an offeror fails to provide a certification in their technical proposal that it has a formal relationship with a TIC compliant provider or TICAP for Managed Security Services, it will be considered a significant deficiency and reflected as a reduced rating for the offeror’s technical approach and would be sufficient to justify a “poor” rating for technical approach.

¹ The TIC initiative was implemented in several Office of Management and Budget (OMB) memoranda to “optimize individual external connections, including internet points of presence currently in use by the federal government. It will improve the federal government’s incident response capability through the reduction of external connections and centralized gateway monitoring at a select group of TIC Access Providers (TICAP).” See OMB M-08-16, Guidance for Trusted Internet Connection Statement of Capability Form. The RFQ required vendors to adhere to this and other OMB guidance in providing the services. RFQ at 10-11.

AR, Tab 13, RFQ, Amend. 02, at 83-84. The RFQ's statement that only highly-rated quotations without weaknesses or deficiencies would be eligible for award remained unchanged. Id. at 94. Relevant to this protest, the RFQ defined a "poor" rating for technical evaluations as reflecting a quotation that included "many deficiencies, significant weaknesses and weaknesses." RFQ at 96. This too was unaffected by the amendment.

Final quotations were due on August 9, 2017. AR, Tab 13, RFQ, Amend. 02, at 1. On September 22, 2017, the agency issued the task order to Zentech. MOL at 2. Around this time, Occam learned of the changes made in Amendment 02 from another business, since it did not receive the amended solicitation after not submitting an opt-in response. Protest at 7. This protest followed.²

DISCUSSION

Occam alleges that the SBA failed to provide a fair opportunity to compete in the procurement and that the agency's amendment to the solicitation significantly relaxed the certification requirement for the stage-one responses.³ The crux of the protester's primary argument is that it did not express interest in the procurement based on the certification requirement that was later changed. Protest at 8-9. Occam states it initially made the business decision not to opt into the competition because it did not believe that it could negotiate a satisfactory subcontract with a TIC-compliant provider or TICAP in the time provided and did not know that the SBA would relax or waive this requirement. Protest at 1. Occam further alleges that the SBA relaxed this requirement for many vendors that opted-in without certifying that the submitted quotation would include a formal subcontracting arrangement.⁴ Response to Request for Dismissal and Supp. Protest, at 8-9. We do not agree with Occam's premise that the amendment

² The awarded value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award indefinite delivery/indefinite quantity contracts. 41 U.S.C. § 4106(f).

³ Occam learned of the list of vendors that provided opt-in statements, and the agency's consideration of those statements, during the course of the protest. Based on this information, Occam filed its supplemental protest alleging that the SBA relaxed a material requirement.

⁴ In its protest submissions, Occam raises arguments that are in addition to, or variations of, those discussed herein, including, for example, arguing that because the task order was to be awarded on a best-value basis, even a quotation with a poor rating would have a chance of award. Protest at 10-11. We have reviewed all of Occam's various arguments and find no basis to sustain its protest.

reflected a material change in the terms of the solicitation, and deny the protest on this basis, as discussed below.

Where an agency's requirements change in a material way after a solicitation has been issued, the agency must generally issue an amendment and afford all offerors an opportunity to compete for its changed requirements. Murray-Benjamin Elec. Co., L.P., B-400255, Aug. 7, 2008, 2008 CPD ¶ 155 at 3-4. Nonetheless, our Office has explained that where a solicitation contemplates, for example, ongoing fluctuations of requirements that do not constitute material changes, and such fluctuations occur after a solicitation is issued, an agency need not, in effect, begin the procurement anew. See Companion Data Servs., LLC, B-410022, B-410022.2, Oct. 9, 2014, 2014 CPD ¶ 300 at 10.

Here, Occam's protest allegations do not establish that the agency's actions were improper. With regard to the alleged change in the RFQ's requirement that an opt-in statement include the certification, Occam characterizes Amendment 02 as significantly relaxing the requirement by indicating that a quotation that failed to include a formal subcontracting relationship with a TIC-compliant provider or TICAP "would merely receive a reduced rating for the technical approach, not be eliminated from consideration for the award." Protest at 1-2; Protester's Comments at 13. We disagree.

Amendment 02 did not materially change this aspect of the RFQ. Both before and after it was amended, the solicitation established that only quotations "with the highest ratings and with no weaknesses or deficiencies [would] be eligible for award." See RFQ at 94; AR, Tab 13, RFQ, Amend. 02, at 94. Amendment 02 did not waive or relax the requirement to provide certification of the vendor's formal subcontracting relationship with a TIC-compliant provider, as Occam suggests, but indicated that a failure to include this certification would result in a rating that effectively rendered a quotation unacceptable.⁵ Therefore, while the amendment arguably permitted vendors to submit a quotation without the certification, the solicitation provided that if a vendor did so, it would not be eligible for award. In short, the amendment did not materially change the terms of the solicitation.

Occam nonetheless argues that it was prejudiced by the agency's decision to "waive these requirements after the opt-in date had passed" because Occam was not given an opportunity to compete under the purportedly less stringent requirements. Protester's Comments at 1. As explained above, we find no merit to Occam's premise that the amendment materially changed the certification requirement, and therefore find that Occam has not demonstrated that the amendment resulted in competitive prejudice.

⁵ As noted above, the solicitation, as amended, provided that failure to submit the required certification would be considered a significant deficiency, see AR, Tab 13, RFQ, Amend. 02, and provided, further, that only highly-rated quotations without significant deficiencies would be eligible for award. RFQ at 94.

The protester has not demonstrated that the agency's action in this regard had an effect on Occam's chance of receiving the award.

We conclude that Occam's allegation that the agency waived a material requirement when it amended the solicitation is belied by the record and therefore provides no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel