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Decision

Matter of: SynergisT JV, LLC

File: B-422384.2; B-422384.4

Date: March 11, 2025

John E. McCarthy Jr., Esq., Zachary H. Schroeder, Esq., and Issac D. Schabes, Esq., Crowell & Moring LLP, for the protester.
Emily J. Chancey, Esq., Maynard Nexsen, PC, for AccelGov, LLC, the intervenor.
Andrew M. Hickey, Esq., Department of Homeland Security, for the agency.
Jacob M. Talcott, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that the agency erred in eliminating the protester's quotation from the competition for quoting labor categories (LCATs) under special item numbers (SINs) from the protester's Federal Supply Schedule (FSS) contract other than the SIN under which the solicitation was issued is sustained where the solicitation did not limit applicable SINs.

DECISION

SynergisT JV, LLC, a women-owned small business of McLean, Virginia, protests the establishment of a blanket purchase agreement (BPA) with AccelGov, LLC, a women-owned small business of Huntsville, Alabama, under request for quotations (RFQ) No. 70FA3123Q00000045, issued by the Department of Homeland Security, Federal Emergency Management Agency, for project management and cyber security compliance support services. The protester, which is the incumbent contractor, contends that the agency unreasonably eliminated its quotation from the competition based on unstated evaluation criteria.

We sustain the protest.

BACKGROUND

On August 23, 2023, the agency issued the subject solicitation to women-owned small business program vendors under the General Services Administration's (GSA) Multiple Award Schedule (MAS). Contracting Officer's Statement (COS) at 2. The RFQ was

solicited under special item number (SIN) 54151HACS.¹ Agency Report (AR), Exh. 16, RFQ at 3. The solicitation contemplated the establishment of a blanket purchase agreement (BPA) using the procedures of FAR subpart 8.4 and sought project management and cyber security compliance services in support of the agency's information technology system owners and key stakeholders. COS at 1-2. The due date for phase one quotations, as amended, was September 25, 2023. *Id.* at 3.

The solicitation provided for the evaluation of quotations in two phases. RFQ at 49. Under phase one, the agency would evaluate the following evaluation factors: facility clearance letter and prior demonstrated experience. *Id.* For the facility clearance letter, vendors were to submit a letter signed by the director of the Defense Security Service as evidence that the vendor possessed a facility clearance at the top secret level. *Id.* at 50. The agency would evaluate this factor on an acceptable/unacceptable basis. *Id.* For prior demonstrated experience, vendors were to submit a report detailing their experience with, among other things, information security support services and supporting multiple systems across multiple offices. *Id.* at 50-51. The agency would assign quotations a rating of high confidence, moderate confidence, or low confidence under this factor. *Id.* at 50. After evaluating phase one quotations, the solicitation provided that the agency would issue advisory notifications that informed vendors whether they should proceed to phase two. *Id.* at 48.

Under phase two, the agency would evaluate the following evaluation factors: technical/management capability, capability of proposed key personnel, and price. *Id.* at 49. For the technical/management capability factor, the agency would evaluate the vendor's ability to plan, organize, access, and manage resources such as personnel and subcontracts. *Id.* at 51. For the capability of proposed key personnel, the agency would evaluate the experience and availability of the proposed key personnel in providing the services listed in the performance work statement. *Id.* at 52. The agency would assign these factors a rating of high confidence, moderate confidence, or low confidence. *Id.* at 50. For price, vendors were to complete a pricing template that included labor categories and hours needed for each category. *Id.* at 53.

The solicitation anticipated that source selection would be made on a best-value tradeoff basis where the facility clearance letter, prior demonstrated experience, and technical/management capability were all of equal importance; capability of proposed key personnel was the least important evaluation factor. *Id.* at 49. The technical factors, when combined, were more important than price. *Id.*

¹ A SIN is a group of generically similar (but not identical) supplies or services that are intended to serve the same general purpose or function. Federal Acquisition Regulation (FAR) 8.401. Buyers may use the General Services Administration (GSA) eBuy system to notify all sellers listed under a particular SIN category or a lesser number of sellers. *Pitney Bowes, Inc.*, B-416787, Dec. 6, 2018, 2018 CPD ¶ 414 at 2 n.2.

Initial Evaluation and Protests

The agency received phase one quotations by the deadline on September 25, 2023; the agency issued advisory notifications on November 3. COS at 3. Four vendors submitted phase two quotations on November 17. *Id.* After evaluating the quotations, the agency selected SynergisT for establishment of the BPA. Memorandum of Law (MOL) at 2. Disappointed vendors subsequently filed protests with our Office and with the U.S. Court of Federal Claims (COFC) challenging the agency's evaluation and source selection decision. COS at 3. In response to the protests, the agency took corrective action, stating that it would reevaluate quotations and make a new source selection decision. *Id.*

Following the agency's corrective action, the agency again selected SynergisT for the BPA. *Id.* Disappointed vendors again protested at COFC, and the agency again took corrective action, stating that it would reevaluate quotations and make a new source selection decision. MOL at 2. COFC dismissed the protests on July 19. COS at 3.

Current Evaluation and Protest

As part of the agency's corrective action, the agency requested that SynergisT complete and submit a crosswalk that compared the RFQ's labor categories (LCATs) with SynergisT's GSA MAS LCATs. AR, Exh. 21, Req. for LCAT Crosswalk at 1-2. SynergisT's response indicated that all of its LCATs were on its GSA MAS schedule with two of its seven LCATs listed under SINS other than 54151HACS.² AR, Exh. 21.1, SynergisT LCAT Crosswalk.

Following the agency's second corrective action, the new due date for phase two quotations was November 17, 2024. *Id.* On November 27, the agency sent an unsuccessful vendor notice to SynergisT, providing that its quotation was eliminated from the competition during the phase two evaluation. AR, Exh. 23, Unsuccessful Vendor Notice at 1. The agency explained that it eliminated SynergisT's quotation from the competition because SynergisT's quotation provided LCATs and rates outside of SIN 54151HACS. According to the contracting officer, "Synergist proposed their Program Manager from SIN 541611 and Technical Writer from SIN 54151S which is not allowable." COS at 3-4. This protest followed.

² Specifically, for the solicitation's program manager LCAT, SynergisT proposed a labor category under GSA MAS SIN 541611, Management and Financial Consulting, Acquisition and Grants Management Support, and Business Program and Project Management Services, and for the technical writer LCAT, SynergisT proposed a labor category under GSA MAS SIN 54151S, Information Technology Services. AR, Exh. 21.1, SynergisT LCAT Crosswalk.

DISCUSSION

SynergisT contends that it was improper for the agency to eliminate its quotation from the competition due to its failure to provide LCATs and rates under SIN 54151HACS. The protester argues that the solicitation did not limit vendors to quote LCATs under SIN 54151HACS but allowed them to quote any LCATs from the vendor's underlying Federal Supply Schedule (FSS) contract with a scope that met the agency's requirements, regardless of SIN, which, for the protester, included SIN 541611 and SIN 54151S. In its supplemental protest, the protester contends that the agency engaged in disparate treatment by applying this restriction only to the protester. For reasons discussed below, we sustain the protest.

It is a fundamental principle of federal procurement that an agency must evaluate quotations consistent with the terms of the solicitation and, while the evaluation of vendors' quotations generally is a matter within the procuring agency's discretion, our Office will question an agency's evaluation where it is unreasonable, inconsistent with the solicitation's stated evaluation criteria, or undocumented. *Tantus Techs., Inc.*, B-411608, B-411608.3, Sept. 14, 2015, 2015 CPD ¶ 299 at 6. In this regard, when an agency issues an RFQ to vendors under FAR subpart 8.4 and conducts a competition for the establishment of a BPA, we will review the record to ensure that the agency's actions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Applied Insight, LLC*, B-421221, B-421221.3, Jan. 20, 2023, 2023 CPD ¶ 33 at 6-7.

As we have previously explained, FAR subpart 8.4 does not require an agency to identify an applicable SIN or otherwise restrict a vendor's ability to propose items only from a single SIN. *Phoenix Env't'l Design, Inc.*, B-422547, July 29, 2024, 2024 CPD ¶ 169 at 5; *Pitney Bowes, Inc.*, *supra*. Specifically, in *Pitney*, we concluded that

[p]ursuant to FAR [] 8.402(b), all GSA schedule contractors must publish an authorized FSS pricelist that contains all supplies and services offered by the contractor under its contract. In addition, this section of the FAR requires the pricelist to include the pricing and terms and conditions pertaining to each SIN that is on the vendor's schedule contract. Although the FSS contracts are organized by SINs, FAR subpart 8.4 does not include any provision specifically requiring an agency to identify an applicable SIN when ordering from a schedule contract, or otherwise restrict a vendor's ability to propose items only from a single SIN.

Id.

In this regard, when a RFQ does not include a provision that specifically limits goods or services to a particular SIN, the relevant question in reviewing an agency's evaluation of quotations is whether the quoted goods or services are on the schedule contractor's applicable underlying FSS contract. *Pitney Bowes, Inc.*, *supra*.

The parties agree that a solicitation can limit vendors to proposing services under a single SIN, but dispute whether the subject solicitation included such a limitation. According to the protester, the solicitation did not specifically limit vendors to proposing LCATs under SIN 54151HACS. Protest at 8. At most, the protester argues, the solicitation contained only a general provision that the agency would issue the solicitation under GSA MAS 54151HACS, meaning that vendors were permitted to quote any LCATs on their underlying FSS contract. *Id.* The agency, however, contends that the solicitation limited vendors to providing LCATs and rates under SIN 54151HACS by providing that the procurement would be “solicited under GSA MAS 54151HACS.” MOL at 5, citing RFQ at 3. Contrary to the protester’s position, the agency argues that the solicitation would have needed a provision permitting vendors to propose other SINs rather than a provision that limited the applicable SINs. *Id.*

Based on the record, we agree that the agency improperly eliminated the protester’s quotation for failing to provide LCATs under SIN 54151HACS. While it is true, as the agency argues, that the solicitation provided that the RFQ would be solicited under GSA MAS 54151HACS, it does not follow that this language limited vendors to quote labor categories from their FSS contracts that were listed under SIN 54151HACS. Indeed, the RFQ only generally provided that the BPA established under the RFQ “will be based on the Quoter’s current GSA MAS” without any reference to SIN 54151HACS. RFQ at 3.

As outlined in *Phoenix Env’tl Design, Inc.* and *Pitney Bowes, Inc.*, vendors are free to quote goods or services listed on their underlying FSS contract unless there is a provision in the solicitation that specifically limits vendors to quote products or services under a specific SIN.³ *Phoenix Env’tl Design, Inc.*, *supra*; *Pitney Bowes, Inc.*, *supra*. As in those decisions, the solicitation here did not contain any provision that expressly limited vendors to a particular SIN; therefore, vendors were permitted to quote LCATs from their underlying FSS contract without regard to the particular SIN so long as the quoted items were within the scope of their schedule contracts. *See Pitney Bowes, Inc.*, *supra*. As the protester points out, its underlying FSS contract contained five SINs: 541611, 518210C, 54151HACS, 54151HEAL, and 54151S. The LCATs that it identified for its program manager and technical writer were listed under SIN 541611 and SIN 54151S respectively.⁴ Protest at 6. Because these LCATs were listed under the

³ In *BAO Systems, LLC*, B-421561.13 *et al.*, Apr. 10, 2024, 2024 CPD ¶ 92, for example, we found that the RFQ limited vendors to quoting LCATs under a specific SIN where it expressly provided that “[t]his BPA is being competed under the GSA MAS schedule 54151S,” directed vendors to submit quotations “in accordance with the MAS schedule 54151S,” and advised vendors that their labor rates should “align with [vendor’s] MAS schedule 54151S rates.” *Id.* at 8-9.

⁴ We note that, in evaluating the protester’s quotation, the agency concluded that the protester’s proposed key personnel for the LCATs at issue possessed “the knowledge, experience, skills, and educational/certification requirements to fully execute the contract and meet the performance standards.” AR, Exh. 20.1, Evaluation of Key Personnel at 1.

protester's underlying FSS contract and given that there was no solicitation provision that limited their applicability, we conclude that it was unreasonable for the agency to eliminate the protester's quotation from the competition solely on the basis that these LCATs were not listed under SIN 54151HACS. Accordingly, we sustain this protest ground.⁵

CONCLUSION AND RECOMMENDATION

As noted above, we conclude that the agency unreasonably evaluated SynergisT's quotation by eliminating its quotation for failing to provide LCATs under 54151HACS. We further conclude that SynergisT was competitively prejudiced by this evaluation error, in that but for the agency's actions, the protester would have had a substantial chance of receiving the award. *Up-Side Mgmt. Co.*, B-417440, B-417440.2, July 8, 2019, 2019 CPD ¶ 249 at 7.

Accordingly, we recommend that the agency reevaluate SynergisT's quotation in a manner consistent with this decision and, if warranted, make a new selection decision. To the extent it is the agency's position that the RFQ should have included language limiting vendors to offering labor categories only under SIN 54151HACS, the agency should amend the solicitation to add that language and provide vendors with an opportunity to respond to the revised RFQ prior to reevaluating quotations. We also recommend that SynergisT be reimbursed the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). SynergisT should submit its certified claim for such costs, detailing the time spent and the costs incurred, directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Edda Emmanuelli Perez
General Counsel

⁵ In its supplemental protest, the protester contends that the agency engaged in disparate treatment in removing its quotation from the competition. Comments and Supp. Protest at 14. Specifically, the protester argues that nothing in the record indicates that the agency applied the SIN 54151HACS restriction "in an evenhanded manner." *Id.* In other words, the protester argues that the agency has failed to prove that it applied this limitation in a non-disparate way. Because we sustain the protester's challenge concerning the elimination of its quotation from the competition, we do not address its remaining argument concerning disparate treatment.