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Decision

Matter of: CLI Solutions, Inc.

File: B-401176; B-401176.2

Date: June 3, 2009

Richard L. Moorhouse, Esq., Jacob B. Pankowski, Esq., and Sean M. Connolly, Esq., Greenberg Traurig, for the protester.

Richard J. Webber, Esq., Kavika J. Babu, Esq., and Kevin R. Pinkney, Esq., Arent Fox, for FedSys, Inc., an intervenor.

Dennis J. Gallagher, Esq., Department of State, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision

DIGEST

1. Protest that clarification requests issued by agency in fact constituted discussions, such that agency was required to conduct discussions with protester, is denied; even if clarifications did constitute discussions, agency was not required to conduct discussions with protester, since its proposal was not included in competitive range.
 2. Protester is not an interested party for purposes of challenging affirmative determination of awardee's responsibility where record shows that, even if challenge were sustained, an intervening offeror would be next in line for award.
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DECISION

CLI Solutions, Inc., of Tampa, Florida, protests the Department of State's (DOS) award of a contract to FedSys, Inc., of Reston, Virginia, under request for proposals (RFP) No. SAQMMA08R0322, for language-related services in Iraq. CLI challenges DOS's conduct of the procurement and FedSys's eligibility for award.

We deny the protest.

The solicitation contemplated the award of one or more time and materials/labor hour contracts for a 1-year base period, with four 1-year options, to furnish language-related services, including interpreting, translating and transcription, in support of the U.S. Embassy, consulates, and regional embassy offices in Iraq. Award was to be made on a "best value" basis applying two evaluation criteria:

(1) technical, which included (in descending order of importance) factors for organizational capability, management plan, organizational structure and personnel, quality assurance surveillance plan, and past performance; and (2) cost/price, with prices to be “compared on a daily labor rate total basis,” calculated assuming four conference interpreters, four simultaneous interpreters, four consecutive interpreters, four translators, and four monitors, with site supervision and corporate labor separately priced. Technical merit was more important than cost/price. RFP §§ L, M.

Fifteen proposals, including CLI’s and FedSys’s, were received. Six proposals received an overall very good evaluation rating under the technical factor, including those of FedSys (with an evaluated price of approximately \$26.1 million), which was ranked first technically, Technatomy Corporation (\$27.7 million), Szanca Solution, Inc. (\$22.3 million), Offeror C (\$36.2 million), Offeror D (\$26.8 million), and Offeror E (\$41.3 million). Six proposals received an overall satisfactory rating under the technical factor, including those of Offeror F (\$31.5 million), which was ranked seventh technically, and CLI (approximately \$[REDACTED]), which was ranked eighth. Three proposals received an overall marginal rating under the technical factor.

DOS eliminated the nine proposals from the competition—including CLI’s—that received satisfactory or marginal ratings under the technical factor, and then issued clarification requests to the remaining six offerors (whose proposals had received very good ratings under the technical factor) regarding their price proposals. Source Selection Decision (SSD) at 2. After receipt of the firms’ responses, DOS determined that FedSys’s proposal offered the best value based on the firm’s expertise and experience, including current work in Iraq and experienced people on staff, sound recruitment approach, suitable and realistic system for tracking contract performance, comprehensiveness of the proposal, and proposal of a proven subcontractor with prior linguistic experience in Iraq. However, given the increasing demand for language-related services of the type included under the solicitation, DOS determined to award contracts to two additional offerors, including: Technatomy, whose proposal was rated second technically, and which was found to have a “sound track record in Iraq and with DOS as a solid performer in the arena of language related services,” and experienced people on staff; and Szanca, whose proposal was rated third technically. SSD at 4-7. Upon learning of the resulting awards, and after receiving a debriefing, CLI filed this protest with our Office.

In reviewing protests of an agency’s evaluation and source selection decision, we will not reevaluate proposals; rather, we will review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation’s evaluation criteria, and applicable procurement laws and regulations. Keeton Corrections, Inc., B-293348, Mar. 4, 2004, 2005 CPD ¶ 44 at 6. Based on our review of all of CLI’s timely arguments, we find no basis for sustaining the protest. We discuss the protester’s principal arguments below.

DISCUSSIONS

CLI asserts that DOS was required to engage in discussions to ascertain the reason for the wide discrepancy in pricing--CLI's overall evaluated price of approximately \$[REDACTED] was significantly higher than FedSys's (\$26.1 million), Technatomy's (\$27.7 million), and Szanca's (\$22.3 million). CLI notes, in this regard, the language in RFP section B stating that

[t]he Contractor shall be required to ensure the most advantageous use of the budget allotted Embassy Baghdad for this contract. . . . The Contracting Officer will review cost and pricing of proposed workers and will advise if the proposed worker is exceeding the recommended level of compensation for a Government employee performing similar work and with similar responsibilities.

RFP § B.6. According to CLI, since the level of compensation was to be based on federal Civil Service pay scales, there should not have been such a wide discrepancy. CLI also asserts that, while the clarification requests to the six offerors did not result in the submission of revised prices, the requests nevertheless amounted to discussions, such that the agency was required to conduct discussions with CLI.

CLI's arguments are without merit. First, regarding the language above from RFP section B, although the awardees' pricing was furnished to CLI along with their proposals (under the protective order issued by our Office in this matter), CLI has not pointed to any specific labor rate offered by the awardees or included in its own proposal that exceeded the recommended level of compensation for a government employee performing similar work and with similar responsibilities. Thus, on this record, there is no basis for us to question the agency's price evaluation, or to find that CLI should have been included in discussions for purposes of discussing this matter.

Second, even if we found that the agency's communications with the six offerors amounted to discussions rather than mere clarifications, there would be no basis for us to find that CLI was entitled to discussions. In this regard, the Federal Acquisition Regulation (FAR) permits an agency to limit the competitive range to only the "most highly rated proposals," and does not require that discussions be held with offerors outside the competitive range. FAR §§ 15.306(c)(1), (d)(1); L-3 Communications EOTech, Inc., B-311453, B-311453.2, July 14, 2008, 2008 CPD ¶ 139 at 4. Here, following the proposal evaluation, the agency winnowed the competition down to the six offerors whose proposals received very good ratings under the technical factor and were lower priced than CLI's; it eliminated CLI's lower-rated proposal and those of the remaining eight offerors. This action was tantamount to a competitive range determination. CLI has made no showing that the agency unreasonably limited the competitive range in this manner, or that the agency otherwise would be

required to extend discussions—assuming that discussions in fact were held—beyond those six offerors. See Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3 (determination whether a proposal should be included in competitive range).

CLI asserts that FedSys should have been determined to be nonresponsible and thus ineligible for award. In this regard, CLI notes that, in June 2007, in response to a protest CLI filed in connection with a Defense Intelligence Agency (DIA) procurement, the Small Business Administration (SBA) decertified FedSys as a qualified Historically Underutilized Business Zone (HUBZone) small business, finding that its principal office was not located within a HUBZone. SBA Decision Under Solicitation No. HHM402-07-Q-0075, June 29, 2007, app. den., July 23, 2007. CLI states that this decertification led to termination of the contract that had been awarded under the solicitation. According to the protester, FedSys's decertification indicated that FedSys had misrepresented its status under the solicitation such that it lacked the requisite business integrity to be found responsible here.

Where an intervening offeror, not the protester, would be in line for award if the protester's challenge were sustained, we consider the protester's interest to be too remote for it to qualify as an interested party. See Evans Sec. Solutions, Inc., B-311035, Mar. 19, 2008, 2008 CPD ¶ 58 at 2; Four Seas and Seven Winds Travel, Inc., B-244916, Nov. 15, 1991, 91-2 CPD ¶ 463 at 4. As noted above, CLI's technical proposal was ranked only eighth technically and thirteenth as to cost/price, and was not included with the six proposals under consideration for award. Because there were a number of intervening offerors who would be in line for award ahead of CLI,

CLI is not an interested party for purposes of questioning FedSys's responsibility. See Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2009).¹

The protest is denied.

Daniel I. Gordon
Acting General Counsel

¹ In any case, because the determination that an offeror is capable of performing a contract is largely committed to the contracting officer's discretion, we generally will not consider protests challenging affirmative determinations of responsibility except under limited, specified exceptions. 4 C.F.R. § 21.5(c); T. F. Boyle Transp., Inc., B-310708, B-310708.2, Jan. 29, 2008, 2008 CPD ¶ 52 at 5. The exceptions are protests that allege that definitive responsibility criteria were not met, or identify evidence raising serious concerns that, in reaching a responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c). CLI has not asserted that FedSys's proposal failed to meet any definitive responsibility criteria in the solicitation. Furthermore, DOS reports, and CLI does not dispute, that it was unaware of SBA's decertification of FedSys as a qualified HUBZone small business.