



Decision

Matter of: Patriot Construction, Inc.

File: B-407268

Date: November 28, 2012

Christopher Cotta for the protester.

Kate Gorney, Esq., Department of Veterans Affairs, for the agency.

Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly awarded construction contract to firm whose state contractor's license had been suspended is denied because possession of state license is a matter of responsibility, and therefore awardee was properly allowed to rectify its license status after proposal due date and did so promptly.

DECISION

Patriot Construction, Inc., of Stockton, California, a small business, protests the award of a contract to K.O.O. Construction, Inc., of Sacramento, California, under request for proposals (RFP) No. VA261-12-R-0055, issued by the Department of Veterans Affairs (VA), for storm drain expansion at the VA Palo Alto Health Care System, Menlo Park Division, in California. Patriot argues that the VA failed to reject K.O.O.'s proposal because the firm's contractor license was suspended at the time of both proposal submission and award.

We deny the protest.

BACKGROUND

On May 14, 2012, the VA issued the RFP, seeking proposals from verified service-disabled veteran-owned small business concerns (SDVOSB) to perform a storm drain expansion project. The RFP provided that award would be made to the firm that submitted the lowest priced, technically-acceptable proposal. RFP at 1.

The RFP specified six evaluation factors: prime contractor's project experience, project personnel experience, technical/management approach, past performance,

copy of contractor's license from the SDVOSB prime contractor, and price. RFP at 20. Although the RFP provided page limits and narrative explanations for each of the first four factors, the fifth factor simply stated "Evaluation Factor 5 – Current Copy of Contractor's License of the SDVOSB Prime Contractor," without further explanation. RFP at 24.

On June 26, Patriot and K.O.O. submitted proposals to the VA.¹ The VA evaluated both firms' proposals as unacceptable and thereafter opened discussions. Following discussions,² both firms submitted revised proposals on July 20. The VA subsequently issued two additional amendments to incorporate revised wage determinations and updated contract clauses, after which both firms submitted revised proposals on July 30 and August 20. The VA evaluated both firms' final proposal revisions as technically acceptable and concluded that K.O.O.'s final price was \$2,235,789, while Patriot's was \$2,368,186.

On Friday, August 24, the VA selected K.O.O. for award as the lowest priced, technically-acceptable offeror and notified Patriot of the selection by e-mail. Upon receiving notice of the award, Patriot provided the contracting officer with a document from the California State License Board website, which stated that K.O.O.'s "[I]icense is suspended for failure to comply with an outstanding civil judgment." Protest attach 1 at 1. The contracting officer immediately contacted K.O.O. to request a response by the next business day, Monday, August 27.

On August 27, K.O.O. responded to the contracting officer, and on August 28, supplemented its response with a letter dated August 27 from an attorney for the California Division of Labor Standards Enforcement (DLSE), stating that K.O.O. had satisfied the judgment and that DLSE had no objection to reinstatement of the license. AR, Exh. 6, Letter from Counsel for Labor Commissioner to Licensing Board, Aug. 27, 2012, at 1. On August 29, K.O.O. informed the VA that its license status had been restored to active status.

On August 31, Patriot filed this protest.

¹ A third firm submitted a proposal, but the VA rejected it because the firm was not listed as a verified SDVOSB. That firm filed an unsuccessful agency-level protest of the rejection and did not participate further in the competition. Contracting Officer's Statement at 1. The remainder of our decision discusses only Patriot and K.O.O.

² On the same day that the VA opened discussions, it also issued an amendment to the RFP, which revised the technical/management approach factor, although the revision is immaterial to the issue in this protest. Contracting Officer's Statement at 1.

DISCUSSION

Patriot argues that K.O.O.'s final proposal revision should have been evaluated as technically unacceptable because the firm's license was suspended at the time. Protest at 3; Protester's Comments at 2. Patriot also argues that K.O.O. deceived the VA by submitting its license without stating in the proposal that the license was suspended. Id.; Protester's Supplemental Comments at 2.

The VA argues that the RFP did not specify any evaluation criteria for the license factor, other than that the license be submitted, which both Patriot and K.O.O. did. Agency Report (AR) at 1. The VA further argues that the license requirement was a matter of responsibility and, thus, was properly remedied after the due date for final proposal revisions. AR at 6. Therefore, the VA argues, the contracting officer properly determined (and reaffirmed) that K.O.O. was responsible, and awarded the contract on that basis.

An allegation that a competing offeror lacks a required state license, or that the license has been suspended, is a challenge to the offeror's responsibility, even where the solicitation requires submission of the license with the bid or proposal. See Day Detectives, Inc., B-208312.2, Oct. 28, 1982, 82-2 CPD ¶ 379 at 1 (where invitation for bids required submission of state license, allegations that low bidder failed to submit license, and further, that license was suspended, were challenges to bidder's responsibility). As such, where questions arise, the offeror should be afforded a reasonable opportunity after proposal submission to furnish evidence in support of its responsibility. Carolina Waste Sys., Inc., B-215689.3, Jan. 7, 1985, 85-1 CPD ¶ 22 at 2.

Additionally, a contracting officer's determination that a bidder or offeror is responsible is largely committed to the contracting officer's discretion. Our Office generally will not consider a protest challenging a contracting officer's affirmative responsibility determination. The exceptions are protests that allege that definitive responsibility criteria in the solicitation were not met and those that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2012). Neither exception applies here.

Here, the record reflects that K.O.O. supplied a copy of its contractor license at the time of proposal submission, and thus complied with the literal terms of the RFP. Although there is no dispute that K.O.O.'s license was suspended at that time, the firm promptly remedied that failure after being advised of the agency's concerns. These actions were proper to resolve the questions about K.O.O.'s responsibility that had been raised by Patriot. The contracting officer then reaffirmed the decision

to award the contract. We see no basis to question the contracting officer's discretion in determining that K.O.O. was a responsible contractor.

The protest is denied.

Lynn H. Gibson
General Counsel