

UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE

_____))
Protest of:))
JEQ & CO. Logistics Solutions) B- 415142
Under Solicitation No.))
SPE8EE-17-T-3039))
_____))

MOTION TO DISMISS

Pursuant to 4 C.F.R. § 21.3(b), Defense Logistics Agency – Troop Support (“DLA Troop Support” or “the Agency”) hereby moves for summary dismissal of the protest filed by JEQ & CO. Logistics Solutions (“JEQ”) with the United States Government Accountability Office (“GAO”) on August 24, 2017. JEQ protests the award to Consolidated Cordage Corporation (“CCC”) on the grounds that CCC is not a certified HUBZone small business concern (“SBC”) and thus is not eligible for award.¹ JEQ’s protest should be dismissed as factually and legally insufficient in accordance with 4 C.F.R. § 21.5(f), as CCC did not receive the award on the basis of it being a certified HUBZone SBC. Moreover, JEQ is not an interested party pursuant to 4 C.F.R. §21.0(a)(1), and therefore lacks standing to challenge this award in accordance with 4 C.F.R. §21.1(a).

¹ JEQ also filed this protest with the U.S. Small Business Administration (“SBA”) and the SBA has requested the file from the Agency. Ordinarily, SBA issues such as challenges of a firm’s status are not considered by GAO pursuant to 4 C.F.R. § 21.5(b). However, as explained more fully below, CCC did not represent itself as a HUBZone SBC and award was not made to CCC on the basis of it being a HUBZone SBC. The Agency is coordinating with SBA regarding how it plans to resolve this protest.



STATEMENT OF FACTS

1. DLA Troop Support is a field activity of the Defense Logistics Agency. It supplies food, clothing, medicine, medical supplies and equipment, construction supplies and equipment, and supply related services to the U.S. military worldwide.
2. On August 09, 2017, DLA Troop Support issued Solicitation No. SPE8EE-17-T-3039 (the “solicitation”) for a quantity of 27,646 each of Fibrous Cord, NSN 4020014468097. (Encl. 1, Solicitation No. SPE8EE-17-T-3039). This solicitation was issued pursuant to the terms and conditions set forth in the DLA Master Solicitation for Automated Simplified Acquisitions utilizing the Agency’s electronic system for soliciting requirements valued up to the Simplified Acquisition Threshold. (Encl. 1 at 1; Encl. 2, Defense Logistics Agency (DLA) Master Solicitation for Automated Simplified Acquisitions, Revision 38 (May 26, 2017)).
3. The DLA Master Solicitation for Automated Simplified Acquisitions states that the “automated evaluation program evaluates all qualified quotations on the basis of price alone... .” (Encl. 2 at 3, “Automated Evaluation Factors”).
4. The solicitation incorporated Defense Logistics Agency Acquisition Directive (“DLAD”) 52.219-9008, Combined HUBZone/Small Business Set-Aside Instructions. (Encl. 1 at 2).
5. DLAD 52.219-9008 states, in pertinent part, that:

This solicitation is restricted to small business concerns. All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence: (1) HUBZone small business concerns (FAR 52.219-3); then, if no qualified quote is received from a *HUBZone at a fair market price*, (2) small business concerns (FAR 52.219-6). (*Emphasis added*)
6. [REDACTED] quotes were received in response to the solicitation. (Encl. 3, Abstract of Quotes).

CCC (CAGE 00UF8) quoted [REDACTED] price of \$9,557.47. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] JEQ (CAGE 7B1T4) quoted [REDACTED] price of \$24,999.93.

7. CCC quoted as a small business, but did not represent itself as a HUBZone SBC. (Encl. 4 at 2, CCC's Quote). [REDACTED]
[REDACTED]
8. The award was processed by the automated system³ and issued to CCC on August 22, 2017, as CCC was the [REDACTED] quoter that passed the automated evaluation pricing analysis. (Encl. 3 at 1; Encl. 7, Purchase Order No. SPE8EE-17-V-1048).
9. Pursuant to the terms of DLAD 52.219-9008, the award was not made to a HUBZone SBC as the lowest priced quote received from a HUBZone SBC was more than double the price received from the [REDACTED] non-HUBZone small business and was also much higher than prices paid for previous acquisitions⁴ for similar quantities. (Encl. 3)

LEGAL ARGUMENT

A. JEQ's Protest Fails to Set Forth Facts that Demonstrate a Violation of Law or Regulation

JEQ alleges that CCC was not eligible for the subject award because it is not a certified HUBZone SBC. For purposes of legal sufficiency, JEQ's protest assumes that CCC misrepresented itself as a HUBZone SBC. JEQ's protest ignores the fact that the set-aside provision included in the solicitation did not require the Agency to make an award to a HUBZone

³ The words "Full Auto" in the box in the top left-hand corner of the abstract indicate that the award was processed by the automated system.

⁴ The Procurement history showing previous purchases made for this item since 2007 is listed on pages 2-3 on the abstract.


[REDACTED]

SBC and that non-HUBZone small businesses were also eligible. The GAO Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds be legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f). This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence sufficient, if un-contradicted, to establish the likelihood of improper agency action. BNL, Inc., B-409450.3, May 1, 2014, 2014 CPD P138 at 9. Unsupported assertions that are mere speculation on the part of the protester do not provide a valid basis for protest. Id.; See, e.g., View One, Inc., B-400346, July 30, 2008, 2008 CPD P 142 at 3 (dismissing protest as legally insufficient where protester provided only bare allegations that award to another firm was improper based on the protester's argument that it submitted a quality proposal at a competitive price).

Here the awardee, CCC, did not misrepresent itself as a HUBZone SBC. Rather, CCC won the award under the terms of the set-aside provision set forth in the solicitation, DLAD 52.219-9008, which permitted the Agency to make an award to a non-HUBZone small business if prices quoted by HUBZone SBCs were not fair market prices. The record shows that the prices received from HUBZone SBCs, including JEQ, were more than double the price received from CCC and also did not compare favorably to procurement history. As such, the Agency properly awarded the purchase order to CCC. Accordingly, JEQ's argument that CCC was ineligible based on it not being a HUBZone SBC is factually and legally insufficient and should be dismissed.

B. JEQ Would Not Otherwise Have Been In Line for Award

Even if award to CCC were improper because it is not a HUBZone SBC, JEQ would not otherwise have been in line for award on this solicitation. Under GAO's bid protest regulations, only interested parties may protest procurement actions by Federal agencies. 4 C.F.R. § 21.1(a). That is, a protestor must be "an actual or prospective bidder or offeror whose direct economic

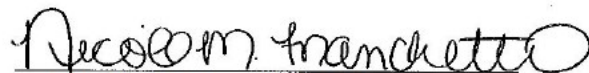


interest would be affected by the award of a contract or by the failure to award a contract." 4 C.F.R. § 21.0(a)(1). "Where a firm would not be in line for award in the event its protest is sustained, that firm lacks the direct economic interest necessary to maintain a protest." Matter of: Asset Mgmt. Real Estate, LLC, B-407214.5 -16, 2014 CPD P57 (Jan. 24, 2014). Here, even if the Agency had made the award to a HUBZone SBC, JEQ would not have received the award because its quote was not the lowest received from a HUBZone SBC. Since the automated award was based solely on price, the award would have been made to [REDACTED], which was the lowest priced HUBZone SBC quoter. For each of the foregoing reasons, JEQ's protest should be dismissed.

CONCLUSION

JEQ's protest alleging that CCC should not have received the award because it is not a certified HUBZone SBC is factually and legally insufficient because CCC did not represent itself as a HUBZone SBC and the Agency was not required to make an award to a HUBZone SBC. Moreover, based upon the quotes received, it is evident that JEQ would not be in line for award even if the Agency had made an award to a HUBZone SBC. Thus, JEQ's protest should be dismissed.

Respectfully submitted,



Nicole M. Franchetti, Esq.
Senior Counsel
DLA Counsel – Troop Support

[REDACTED]

List of Enclosures

* Denotes Protected Material as such documents constitute source selection information or procurement sensitive information which would give a party an unfair competitive advantage.

1. Solicitation No. SPE8EE-17-T-3039
2. Defense Logistics Agency (DLA) Master Solicitation for Automated Simplified Acquisitions, Revision 38 (May 26, 2017)
3. *Abstract of Quotations
4. *Quote Submitted by CCC
5. [REDACTED]
6. Quote Submitted by JEQ
7. Purchase Order No. SPE8EE-17-V-1048

