

Decision

Matter of: Jade Excavation, Inc.

File: B-419515

Date: March 18, 2021

John White, for the protester.
Milton Hsieh, Esq., Department of Transportation, for the agency.
Christopher An, Evan Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest arguing agency was required to reject low bid because the bidder did not have an active System for Award Management (SAM) registration at the time of bid submission as required by solicitation is denied. Compliance with SAM registration requirements are matters of bidder responsibility, not bid responsiveness, therefore the agency correctly allowed the awardee to cure its SAM registration prior to award.

DECISION

Jade Excavation, Inc. (Jade), a small business of Powell Butte, Oregon, protests the award of a contract to York Bros Excavation, LLC (York), a small business of Bend, Oregon, under invitation for bids (IFB) No. 69056720B000022, which was issued by the Department of Transportation, Federal Highway Administration (FHWA), for paving work in the South Shore recreation area in Oregon. Jade asserts that the agency should have rejected York's low bid because York did not have an active registration in the System for Award Management (SAM) at the time of bid submission as required by the IFB.

We deny the protest.

BACKGROUND

On October 16, 2020, FHWA requested sealed bids for paving work within the South Shore recreation area in Oregon. The IFB was issued in accordance with Federal Acquisition Regulation (FAR) part 14. Relevant here, the IFB incorporated by reference FAR provision 52.204-7, "System for Award Management (SAM) (Oct 2018)." IFB at B-10. In relevant part, the provision dictates that "[a]n Offeror must be registered in SAM when submitting an offer or quotation" and establishes that SAM registration must

be maintained through award, during performance, and through final payment of the award resulting from the solicitation. FAR 52.204-7(b)(1).

The agency opened bids on November 18, 2020. Agency Report (AR), IFB at A-3. FHWA received five bids in response to the IFB, with York as the apparent low bidder and Jade the second lowest bidder. Contracting Officer's Statement (COS) at 1-2. On November 20, FHWA checked SAM and found no record for York. COS, exh. A, SAM Search. York subsequently notified the agency that it had submitted a request three weeks prior to bid submission to update its SAM registration to reflect a change of address, but the SAM profile was in pending status until it was finally approved on November 25. COS, exh. B, Email from York to Contracting Officer. On December 16, FHWA confirmed that York's SAM registration was active, and awarded the contract to York. COS, exh. C, SAM Search. This protest followed.

DISCUSSION

Jade argues the agency was required to reject York's bid because York did not have an active SAM registration at the time of bid submission, as required by the IFB. We find no basis on which to sustain the protest because, pursuant to FAR section 14.405, FHWA was required to allow York to correct the SAM registration deficiency.

As we recently explained in *Master Pavement Line Corp.*, when conducting a procurement pursuant to FAR part 14, an agency must afford a bidder an opportunity to cure matters that do not concern material obligations of the bidder, *i.e.*, if they do not affect the price, quantity, quality, or delivery terms of the bid. *Master Pavement Line Corp.*, B-419111, Dec. 16, 2020, 2020 CPD ¶ 404 at 3. In this decision, we explained that the requirement for a bidder to be registered in SAM prior to bid submission is not material to the bid itself because it does not impact the material obligations of the bidder; rather, it is a matter concerning the bidder's responsibility. *Id.* at 5. On that basis, we sustained the protest because the agency did not afford the protester an opportunity to cure this immaterial defect. *Id.* at 4. Thus, contrary to Jade's arguments that FHWA acted improperly when it allowed York to cure the SAM registration deficiency, the dictates of FAR section 14.405 compelled FHWA to allow York to cure this deficiency, which York did in a timely manner.

Additionally, we nevertheless find that JBE cannot establish that it was prejudiced by FHWA's waiver of the requirement for SAM registration at the time of bid submission. Competitive prejudice is an essential element of any viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper. *Interfor US, Inc.*, B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7. With respect to allegations that an offeror's SAM registration is inaccurate or incomplete, our Office has generally recognized that minor informalities related to SAM (or its predecessor systems) registration generally do not undermine the validity of the award and are waivable by the agency without prejudice to other offerors. See, *e.g.*, *High Plains Computing, Inc. d/b/a HPC Solutions*, B-409736.2, Dec. 22, 2014, 2014 CPD ¶ 379; *C.L.R. Dev. Grp.*,

B-409398, Apr. 11, 2014, 2014 CPD ¶ 141 at 7. We have found no prejudicial error in these cases largely because an awardee's registration status does not implicate the terms of its bid, and there is nothing to suggest that another offeror would have altered its bid to its competitive advantage in response to a relaxed SAM registration requirement. *Master Pavement Line Corp.*, *supra* at 5 n.4.

Having failed to demonstrate that FHWA violated any applicable procurement law or regulation or otherwise acted unreasonably, we must deny the protester's challenge.

The protest is denied.

Thomas H. Armstrong
General Counsel