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Decision

Matter of: 2M Research Services, LLC

File: B-413993.4

Date: June 19, 2017

Jessica C. Abrahams, Esq., and Thomas F. Rath, Esq., Dentons US LLP, for the protester.
H. Todd Whay, Esq., The Whay Law Firm, for Vision Planning and Consulting, LLC, the intervenor.
Rina Martinez, Esq., and Janice Yun, Esq., Department of Homeland Security, for the agency.
Nora K. Adkins, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Our Office will not consider a protest from an offeror in the competitive range challenging an agency's decision to include another offeror in the competitive range, where the protest was filed prior to the agency's award decision, and the possibility remains that the protester could yet receive the award.

DECISION

2M Research Services, LLC, an 8(a) small business concern located in Arlington, Texas, protests the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)'s inclusion of Vision Planning & Consulting, LLC's (VPC) proposal in the competitive range pursuant to request for proposals (RFP) No. HSFE40-16-R-0002 for technical and administrative support services to FEMA's Assistance to Firefighters Grant Program. 2M challenges the agency's competitive range determination and alleges unequal treatment.

We dismiss the protest.

2M's current protest arises after an earlier protest filed with our Office. In that protest, 2M challenged the agency's evaluation and award decision. For example, 2M argued that the agency's evaluation of VPC's proposal under the staffing plan and key personnel factor, and past performance factor, was unreasonable. The protester alleged that VPC's proposal reasonably could not have merited a high rating under the

staffing plan and key personnel factor. With respect to past performance, 2M asserted that VPC had no record of ever having worked on a government contract in the grants administration area. 2M's protest also generally alleged that VPC's inexperience and lack of resources should have affected the agency's price realism and responsibility determinations.

Subsequent to the filing of the initial protest, the agency notified our Office of its intent to take corrective action. FEMA Corrective Action Notice (Dec. 1, 2016) at 1. The notice provided that the agency intended to: (1) reevaluate the past performance factor, (2) review compliance with the guidance on limitations on subcontracting at Federal Acquisition Regulation section 52.219-14, (3) decide whether to award with or without discussions and conduct price evaluations as necessary, and (4) issue a new technical source selection evaluation board consensus report and a source selection decision document. Id.

2M objected to the agency's proposed corrective action arguing that the plan did not specifically address all of the issues raised in the protest and supplemental protest. Our Office reviewed the objection and concluded that the agency's commitment to make a new source selection decision rendered academic the challenges raised by the protester since the new award decision could result in the selection of a different awardee. See e.g., The Jones/Hill J.V.--Recon., B-286194.2, Dec. 8, 2000, 2000 CPD ¶ 203 at 3. On December 6, we dismissed 2M's protest because the agency's proposed corrective action rendered the protest academic. 2M Research Servs., LLC, B-413993.1, B-413993.2, Dec. 6, 2016 (unpublished decision).

Thereafter, the agency began implementing its proposed corrective action. In this regard, FEMA states, in response to the current protest, that it has "reevaluated past performance and subcontracting levels for all [DELETED] offerors, re-written sections of the technical evaluation consensus report, written the competitive range determination document, entered into discussions with offerors in the competitive range[,] and received final proposal revisions from all offerors in the competitive range." Agency Dismissal Request at 2. Specifically, with respect to 2M, FEMA notified 2M that it was part of the competitive range on April 4, 2017. Id. On May 2, FEMA submitted written discussion questions to 2M, to which 2M responded on May 4. Id. On May 10, FEMA requested a final proposal revision from 2M, which it received on May 18. Id.

2M's current protest was filed with our Office on May 17. The protest challenges the agency's inclusion of VPC in the competitive range.¹ In this regard, 2M argues that the agency's decision to include VPC in the competitive range is unreasonable. 2M contends that VPC's proposal contains material deficiencies, in the areas of staffing, key personnel, and past performance, that cannot be corrected as a result of discussions. 2M alleges that for the same reasons it argued that the agency could not

¹ 2M contends that on May 10, FEMA's contracting officer informed 2M that [DELETED] offerors were included in the competitive range: [DELETED]. See 2M Comments at 3.

award a contract to VPC in 2M's initial protest, the agency could not reasonably conclude that VPC's proposal should be included in the competitive range. 2M also asserts that FEMA's competitive range determination is unequal because it failed to include proposals of offerors that contained fewer deficiencies than VPC's proposal.

We find no basis to review 2M's allegations at this time. In this regard, while our Office has found that an agency may include a technically unacceptable proposal in the competitive range, these matters were addressed after the agency made an award decision. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 3-4. Further, where, as here, the agency has yet to make an award decision, the protester's allegations with respect to VPC are premature. See Intermarkets Global, B-400660.10, B-400660.11, Feb. 2, 2011, 2011 CPD ¶ 30 at 4-5 (challenge to agency's discussions prior to award is premature). Indeed, the agency may ultimately select 2M as the awardee. Accordingly, we dismiss this aspect of the protest. If 2M is not selected for award, it may raise whatever evaluation errors it deems appropriate at that time.

With respect to the protester's argument that the agency's evaluation was unequal because FEMA failed to include other offerors with fewer deficiencies than VPC, we dismiss this aspect of 2M's protest. Any challenge on their behalf must be raised by those offerors, not 2M; those offerors are the only entities that are "interested parties" to challenge their exclusion from the competitive range. 4 C.F.R. § 21.0(a); See Mil-Mar Century Corp., B-407644 et al., Jan. 17, 2013, 2013 CPD ¶ 39 at n.8 (protester is not an interested party to bring protest allegations on behalf of other offerors).

The protest is dismissed.

Susan A. Poling
General Counsel