



Decision

Matter of: GSE, Inc.

File: B-415135

Date: September 22, 2017

Gregory Stevenson, GSE, Inc., for the protester.
Jonathan A. Hardage, Esq., Department of the Army, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation is issued under a broad agency announcement (BAA), protest challenging the terms of the solicitation is untimely where protest is submitted after the closing date for submission of proposals.
 2. Protester's challenge to the agency's evaluation of protester's proposal is untimely where protest is filed more than 10 days after protester was advised of its alleged basis for protest.
 3. Protester's wide-ranging speculation regarding the Army's future actions fails to state valid bases for protest, and this Office does not conduct investigations as part of our bid protest function.
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DECISION

GSE, Inc., of South Lake Tahoe, California, protests the Department of the Army's actions pursuant to broad agency announcement (BAA) Call No. W911W6-17-R-0007 (the solicitation).¹ The solicitation sought proposals to develop and perform engine testing of heavy-fuel systems for unmanned aircraft. GSE protests that the provisions of

¹ The BAA stated that the Army would solicit proposals "in accordance with Federal Acquisition Regulation (FAR) 6.102(d)(2) and FAR 35.016," elaborating that it would "solicit specific white papers or proposals via future Special Notices which will be published on Federal Business Opportunities (FedBizOpps). . . and will be referred to as 'Calls.'" Agency Motion to Dismiss (MTD), Tab 3, BAA at 3.

the solicitation were “seriously flawed,” and that the agency improperly evaluated GSE’s proposal.

We dismiss the protest.

On February 24, 2017, the agency posted the solicitation at issue to the Federal Business Opportunities (FedBizOpps) website, seeking proposals to develop and perform engine-level validation for unmanned aircraft to Technology Readiness Level (TRL) 6.² The solicitation provided that proposals would be evaluated and rated as either category I, category II, or category III,³ and established a closing date of April 11, 2017. On or before the closing date, GSE submitted a proposal.

On July 19, the agency notified GSE that its proposal had been evaluated as category II and advised GSE that “sufficient funding is not presently available to make an award.” MTD, Tab 5, GSE Notification, at 1. Thereafter, GSE and the agency engaged in various communications, during which GSE expressed its dissatisfaction with various aspects of the solicitation/evaluation process and requested a debriefing. Tab 6, Emails between GSE and Agency. On August 15, the agency offered GSE an in-person debriefing on either August 22 or August 24, stating “[p]lease advise what day you will be coming to Fort Eustis.” MTD, Tab 7, Email from Agency to GSE. By email dated August 21, GSE advised the agency that it “respectfully decline[d]” the offered debriefing. MTD, Tab 11, Email from GSE to Agency. Accordingly, no debriefing was conducted.⁴

On August 21, GSE filed this protest with our Office, complaining that the solicitation contained various flaws, including assertions that it “lacked key sections”; contained improper modification of FAR clauses; contained an “inadequate description of the metrics that would be used in the source selection”; lacked “clear language” regarding debriefings and protests; and contained an “unreasonable mandate to submit all of the proposal’s technical details for evaluation to a foreign-owned evaluator.” Protest at 2-3. GSE’s protest also challenges the agency’s evaluation of GSE’s proposal as category II, complaining that “the evaluation team does not understand the technical advantages of GSE’s approach.” Id. at 6.

² TRL 6 was defined as “completing technology validation in the relevant environment via full engine testing.” MTD, Tab 4a, Solicitation, at 3.

³ Category I proposals were “recommended for acceptance and funding is available”; category II proposals “may require further development,” were evaluated “at a lower priority than [c]ategory I,” and were “not always funded”; category III proposals were “recommended for rejection.” MTD, Tab 3, BAA, at 17.

⁴ Debriefings provided pursuant to procurements such as this, conducted under the authority of FAR § 35.016, do not trigger the debriefing exception to our timeliness rules. Millennium Space Sys., Inc., B-406771, Aug. 17, 2012, 2012 CPD ¶ 237 at 3-6.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Our timeliness rules specifically require that a protest based upon alleged solicitation improprieties that are apparent prior to the closing time for submission of proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1); see AmaTerra Envtl. Inc., B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3. Additionally, protests based on other than alleged solicitation improprieties must be filed no later than 10 calendar days after the protester knew, or should have known, the basis for protest. 4 C.F.R. § 21.2(a)(2).

Here, GSE's protest is not timely filed. Specifically, as discussed above, the majority of GSE's protest assertions are complaints regarding the terms of the solicitation that were clearly apparent prior to the solicitation's closing date. As such, GSE was required to challenge those terms prior to submitting its proposal. 4 C.F.R. § 21.2(a)(1).

Similarly, GSE's protest challenging the agency's evaluation of GSE's proposal as category II is not timely filed. The record shows that, on July 19, the agency notified GSE that its proposal had been evaluated as category II and, accordingly, would not be funded. MTD, Tab 5, GSE Notification, at 1. Further, GSE declined to participate in the subsequent debriefing offered by the agency. Thus, GSE clearly knew, or should have known, the purported bases for challenging the agency's evaluation on July 19, but did not file this protest until August 21. As discussed above, our Bid Protest Regulations require that protests based on other than alleged solicitation improprieties must be filed within 10 days after the protester knew, or should have known, the purported bases for protest. On the record here, GSE's protest is not timely filed.

The protest is dismissed.⁵

Susan A. Poling
General Counsel

⁵ In its various protest submissions, GSE speculates regarding the Army's future actions and complains about what it characterizes as "overarching concerns," including "Procurement Waste in Time and Dollars," "National Security Issues," and "Technological Issues." See GSE Response to MTD, Sept. 12, 2017, at 3-18. GSE expressly acknowledges that its complaints in this regard "have nothing to do" with the timeliness of its protest. Id. at 1. On the record here, GSE's wide-ranging speculation and complaints regarding the Army's future actions fail to state a valid basis for protest. 4 C.F.R. § 21.5(f). GSE also requests that GAO conduct an independent investigation in response to GSE's various complaints. Our Office does not conduct such investigations as part of our bid protest function. Coast to Coast Computer Prods., Inc., B-409528.33, Dec. 3, 2014, 2014 CPD ¶ 346 at 6 n.8.