

Decision

Matter of: Triple Point Security, Inc.--Reconsideration

File: B-419375.2

Date: February 11, 2021

Carlo Espiritu, for the protester.

Tony A. Ross, Esq., Department of Health and Human Services, for the agency.

Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where the request does not demonstrate that our decision contained either factual or legal error.

DECISION

Triple Point Security, Inc., of Leesburg, Virginia, requests reconsideration of our decision, *Triple Point Security, Inc.*, B-419375, Dec. 7, 2020 (unpublished decision), wherein our Office dismissed its protest challenging the award of a contract to Zero Trust, LLC, of Bethesda, Maryland, under request for proposals (RFP) No. 75N95020R00009, issued by the Department of Health and Human Services, National Institutes of Health (NIH), for cybersecurity services.

We deny the request for reconsideration.

BACKGROUND

The RFP, issued under the commercial item and simplified acquisition procedures set forth in Federal Acquisition Regulation (FAR) subparts 12.6 and 13.5, sought cybersecurity services to support the National Center for Advanced Translational Sciences. Req. for Dismissal, exh. 1, RFP, amend. 1 at 1, 6, 74. The RFP contemplated the award of an indefinite-delivery, indefinite-quantity contract to be performed over a 3-year ordering period. *Id.* at 49. Award was to be made on a best-value tradeoff basis considering technical, past performance, and cost factors. *Id.* at 67. The technical and past performance factors, when combined, were significantly more important than cost. *Id.*

Thirteen offerors, including Triple Point and Zero Trust, submitted proposals prior to the August 17, 2020, closing date. Req. for Dismissal, exh. 2, Notice of Unsuccessful Offeror at 1. On October 1, NIH notified Triple Point that award had been made to Zero Trust, in the amount of \$1,666,692, as offering the best value to the agency. *Id.*

On October 2, Triple Point requested a debriefing. Req. for Dismissal at 1. On October 16, NIH provided the firm a brief explanation of award pursuant to FAR section 13.106-3. Req. for Dismissal, exh. 3, Brief Explanation of Award at 1. The correspondence communicated that Triple Point's proposal was evaluated as technically inferior, and at a higher evaluated price, when compared to the proposal of Zero Trust. *Id.* at 2.

On October 23, Triple Point challenged the award in a protest filed with our Office. The firm argued that "[t]he Government did not follow the evaluation process or adhere to the evaluation factors" as delineated in the RFP. Protest at 1. According to Triple Point, NIH's failure to follow or adhere to the evaluation factors resulted "in the partial evaluation of proposals and/or omission of information material to the Technical Rating, scoring, and award decision." *Id.* The firm did not support its argument with any details demonstrating how the agency evaluated any proposal inconsistently with the RFP. See *id.*

On November 12, NIH requested dismissal of the protest, asserting that Triple Point's argument amounted to speculation and was subject to dismissal under our Bid Protest Regulations. Req. for Dismissal at 2 (arguing that the protest should be dismissed under 4 C.F.R. § 21.1(c)(4)). NIH argued that the protest lacked any factual support. *Id.* at 2-3. In response, Triple Point argued that Zero Trust did not have an active registration in the System for Award Management (SAM) as required by the RFP. Triple Point Response, Nov. 15, 2020.

On December 7, our Office dismissed the protest as untimely. *Triple Point Security, supra* at 1. We explained that the procurement was conducted using simplified acquisition procedures under FAR part 13. *Id.* at 2-3. As a result, the brief explanation of award did not constitute a "required debriefing" within the meaning of the exception to the requirement that a protest must be filed within 10 days of when the protester knew or reasonably should have known of its basis of protest. *Id.* at 3 (citing *Gorod Shtor*, B-411284, May 22, 2015, 2015 CPD ¶ 162 at 2-3). Therefore, we concluded that the protest was untimely because the challenge was based entirely on information learned in the October 1 notice from the agency, but was not filed until October 23. *Id.* We also noted that Triple Point's argument that Zero Trust did not have an active SAM registration was untimely because it was raised in piecemeal fashion. *Id.*

On December 14, Triple Point requested reconsideration of our decision, asserting that its protest allegations were timely raised. Req. for Recon. at 1.

DISCUSSION

Triple Point argues that it did not know the basis for its protest until after receiving the brief explanation of award, and it also would have raised arguments in a “piecemeal” fashion if it had filed its protest within 10 days of the October 1 notice of award and then revised its protest allegations with new information learned from the brief explanation of award. *Id.* The firm also argues that the agency has never addressed the alleged problem with Zero Trust’s SAM registration. *Id.* at 2.

Under our Bid Protest Regulations, a party requesting reconsideration must either show that our decision contains an error of fact or law, or present information not previously considered, that warrants reversal or modification. 4 C.F.R. § 21.14(a); *A-B Computer Sols., Inc.--Recon.*, B-415819.2, Aug. 27, 2018, 2018 CPD ¶ 306 at 2. We have reviewed the request, and conclude that our decision does not contain any error.

First, our Office correctly dismissed Triple Point’s protest as untimely. Our regulations provide that protests not based upon alleged improprieties in a solicitation:

. . . [S]hall be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier), with the exception of protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. In such cases, with respect to any protest basis which is known or should have been known either before or as a result of the debriefing, and which does not involve an alleged solicitation impropriety . . . , the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held

4 C.F.R. § 21.2(a)(2). Thus, where, as here, a protester challenges the agency’s evaluation of proposals, the protest must be filed within 10 days of when the protester learned the basis for its challenge, unless the required debriefing exception applies.

Our review confirms that Triple Point filed its protest more than 10 days after it learned the basis for its challenge. The protest complained that the agency unreasonably evaluated proposals by not following or adhering to the evaluation factors. Protest at 1. The challenge is not based on any information learned in the brief explanation of award because it does not cite or identify any information contained in the explanation as the underlying reasons supporting its general challenge. *Id.* Thus, because Triple Point first learned the results of the agency’s evaluation on October 1 (*i.e.*, when it received the unsuccessful offeror notice), its protest generally challenging the evaluation results

must have been within 10 days of that date (*i.e.*, October 13).¹ Because the protest was not filed until October 23, the protest was untimely and properly dismissed.²

Further, the required debriefing exception does not apply here because the procurement was conducted using the simplified acquisition procedures set forth in FAR part 13. RFP, amend. 1 at 6. Our decisions explain that an agency does not provide a required debriefing when using simplified acquisition procedures; rather, the agency provides a brief explanation of award in response to a request information under FAR section 13.106-3(d). *Gorod Shtor, supra* at 3. Because the brief explanation of award is not a debriefing, Triple Point's time for filing was not tolled, and the firm was not required to receive the debriefing before pursuing its challenges with our Office. *See id.*

We do not agree with the protester that it reasonably delayed filing its protest in order to avoid raising its challenges in a piecemeal fashion. Our Office prohibits the piecemeal presentation of evidence, information, or analysis to prevent delay to either the procurement process or our ability to resolve protests expediently. *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 4. In contrast, our Office does not prohibit a protester from raising supplemental challenges based on newly learned evidence or information in a timely manner.³ *See Precision Air, Inc.*, B-416541.2, B-416541.3, Nov. 20, 2018, 2018 CPD ¶ 406 at 4 (concluding that a

¹ GAO was closed on October 12, 2020, in observance of Columbus Day, and therefore the date for filing would have extended to October 13. 4 C.F.R. 21.0(d).

² To the extent the protester argues that our decision contained a factual error when it calculated the date for filing using September 29 (*i.e.*, the date of the unsuccessful offeror notice) as opposed to October 1 (*i.e.*, the date Triple Point received the notice), we do not find that this provides us with a basis to grant the protester's request. *See* Req. for Recon. at 2. Even using October 1 as the date for the timeliness analysis, the protest still would have been untimely because it was not filed until October 23.

³ In this regard, our Office correctly dismissed Triple Point's argument that Zero Trust lacked an active SAM registration as constituting the piecemeal presentation of evidence because this evidence supports its general challenge that the agency failed to evaluate whether Zero Trust's proposal complied with the solicitation requirements, and was not presented in the October 23 protest. *See* Req. for Recon. at 1 (explaining that its October 23 protest challenged the agency's failure to evaluate whether Zero Trust's proposal was compliant with the solicitation requirements); Triple Point Response, Nov. 15, 2020, at 1-2 (arguing that its protest is not speculative because Zero Trust lacks an active SAM registration); *see also Leader Communications Inc.*, B-417152.2, B-417152.3, June 26, 2019, 2019 CPD ¶ 241 at 6 (specific legal arguments missing from earlier general challenges constitutes piecemeal presentation of arguments, and is prohibited). Further, Triple Point did not identify this argument as a supplemental challenge, or establish that this argument satisfied our timeliness requirements. *See* Triple Point Response, Nov. 15, 2020, at 1-2.

supplemental protest challenge based on newly learned information does not constitute a piecemeal filing). Accordingly, this contention does not provide us a basis to reconsider our decision.

Second, Triple Point's complaint that NIH has not responded to the protester's argument raised in its response to the dismissal request (*i.e.*, that Zero Trust lacked an active SAM registration) does not provide us a basis to reverse or modify our decision. This argument does not show that our decision contains a factual or legal error because it does not demonstrate the decision erroneously dismissed the protest as untimely.⁴ *A-B Computer Sols., supra*. While the firm may still have some concern regarding Zero Trust's SAM registration status and seek the agency's views on that matter, this argument has no bearing on whether our Office appropriately dismissed the October 23 protest as untimely. Accordingly, we dismiss this argument because it does not facially allege that our decision contained a factual or legal error. 4 C.F.R. § 21.5(f).

As a final matter, we note that the protest allegations were speculative. Our regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), (f). A protest allegation which relies on speculation is legally insufficient because our Office will not find improper agency action based on conjecture or inference. *Raytheon Blackbird Techs., supra* at 3. Here, Triple Point's allegations were speculative because they were not supported by any evidence demonstrating how NIH unreasonably evaluated the proposals. Protest at 1; *cf. Raytheon Blackbird Techs., supra* at 3-4 (protest allegation was dismissed as speculative when it was not supported by any evidence). Thus, Triple Point's arguments do not provide us with a basis to reinstate the protest because the allegations were nevertheless speculative and subject to dismissal. In sum, this contention likewise does not afford us a basis to reconsider our decision.

The request is denied.

Thomas H. Armstrong
General Counsel

⁴ According to the protester, the brief explanation of award erroneously stated the firm's evaluated price as being higher than Zero Trust's evaluated price. Req. for Recon. at 2. Even assuming that this allegation is true, such argument does not demonstrate that the protest allegations were timely filed, and therefore, does not provide us with a basis to grant the firm's request to reinstate its protest. In any event, our Office does not review the adequacy of the brief explanation provided by an agency. *Colonna's Shipyard, Inc.*, B-418896, Sept. 29, 2020, 2020 CPD ¶ 320 at 7.