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Decision

Matter of: Bahrain Maritime & Mercantile International BSC

File: B-407575; B-407575.2

Date: January 8, 2013

DECISION

Bahrain Maritime & Mercantile International BSC (BMMI) protests the award of a contract to Ocean Fair International for full line food distribution for Southwest Asia, Zone 1, under request for proposals (RFP) No. SPM300-11-R-0005, issued by the Defense Logistics Agency.

We dismiss the protest because the agency has notified us that it intends to take corrective action in response to the protest. Specifically, the agency has advised us that it plans to issue an amendment to the RFP clarifying the manner in which the experience/past performance factor will be evaluated; conduct a limited reevaluation; and reconsider its award decision in light of the results of the reevaluation.¹

¹ We recognize that the protester has objected to the agency's proposed corrective action on the grounds that the agency has explained neither the purpose nor the content of the planned amendment and why an amendment is necessary to correct the agency's unreasonable evaluation; the agency should not issue an amendment to the solicitation that is unnecessary to correct the flaws in the initial evaluation; and if for some reason an amendment is necessary to describe the evaluation criteria accurately, offerors should be permitted to submit new proposals. While the agency indicates that it does not "anticipate reopening negotiations or requesting additional information" it has also indicated that the "precise nature of the corrective action has yet to be finalized." Thus, we do not consider the agency to have definitively put the protester on notice that it will not be conducting discussions or permitting offerors to submit revised proposals in connection with the issuance of the contemplated amendment. Until the agency has decided on the content of, and issued, the amendment in question, the protester's objections are premature.

(continued...)

When an agency proposes to reevaluate proposals and reconsider its award decision in light of the results of the reevaluation, the agency action renders a protest of the initial award decision academic. Since it is not our practice to consider academic questions, Dyna-Air Eng'g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132, the protest is dismissed.

Susan A. Poling
General Counsel

(...continued)

We also recognize that the protester has requested that we recommend that the agency pay it the reasonable costs of filing and pursuing its protest, including attorneys' fees. We regard the representation of agency counsel (in her email message of January 4, 2012) that BMMI's "claimed costs should be properly submitted to the contracting officer and will be reviewed and handled as appropriate" as an acknowledgment that the protester should be reimbursed for its reasonable protest costs. Moreover, we note that the standard for entitlement to protest costs is presumed to have been met where, as in this case, agency corrective action is taken in response to "outcome prediction" alternative dispute resolution conducted by a GAO attorney after the agency report has been filed. National Opinion Research Center—Costs, B-289044.3, Mar. 6, 2002, 2002 CPD ¶ 55. Therefore, the protester should file its claim for such costs within 60 days of receiving this decision.