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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Professional Analysis, Inc.

File: B-410202

Date: August 25, 2014

Brian A. Darst, Esq., Brian A. Darst Law Office, for the protester.
David A. Burley, Esq., McDermott Ward, for Spectrum Comm, Inc., the intervenor.
Sandra Compton Simmons, Esq., Department of the Navy, for the agency.
Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging the issuance of a task order under a multiple-award task order contract is dismissed as premature where the agency acknowledges the protester's statutory right to a debriefing, but has delayed the debriefing pending resolution of a size status challenge at the Small Business Administration. Statutorily required debriefings under task and delivery order contracts are within the scope of the timeliness rule for debriefings set forth in our Bid Protest Regulations.

DECISION

Professional Analysis, Inc. (PAI), of Annandale, Virginia, protests the issuance of an order to Spectrum Comm, Inc., of Newport News, Virginia, by the Department of the Navy under request for proposals (RFP) No. N00024-14-R-3252 for support services to the Naval Facilities Engineering Command. PAI challenges various aspects of the evaluation and selection decision.¹

We dismiss the protest as premature.

¹ The protester alleges that the value of the task order issued to Spectrum is \$17,685,966.41. Protest at 3. As such, this procurement falls within our jurisdiction to hear protests related to the issuance of task orders under multiple-award ID/IQ contracts valued in excess of \$10 million. See 10 U.S.C. § 2304c(e)(1)(B).

PAI was provided notice of the award on July 31, 2014, and filed a protest with our Office on August 11. PAI also timely requested a debriefing from the Navy, which has yet to be scheduled. Our Bid Protest Regulations (BPR) provide that we will not consider a protest challenging a procurement conducted on the basis of competitive proposals where a debriefing is required if the protest is filed before the debriefing date offered to the protester; the protest instead should be filed not later than 10 days after the debriefing. BPR, 4 C.F.R. § 21.2(a)(2) (2014).

The Navy requests that we dismiss the protest as premature, arguing that since PAI requested, and is entitled to a debriefing, its protest cannot be filed before the offered debriefing date, which has not yet occurred. Agency Motion to Dismiss at 2. In addition, the Navy has concluded that it will delay the debriefing, which the Navy views as required, until resolution of a small business size challenge that is pending against the awardee. Id. at 1-2. PAI opposes dismissal of its protest as premature, arguing instead that the timeliness rule for debriefings is not applicable here because the task order was issued under a multiple-award task order contract, which is not a procurement conducted on the basis of competitive proposals.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Pacific Photocopy and Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4. We decide protests under procedures prescribed by our Office as may be necessary to the expeditious decision of protests. 31 U.S.C. §§ 3553(a) and 3555(a). The rule in question was adopted consistent with congressional intent that vendors receive statutorily required debriefings before deciding whether or not to file a protest, to address concerns regarding strategic or defensive protests, and to encourage early and meaningful debriefings. 61 Fed. Reg. 39040 (1996); see also The Real Estate Ctr., B-274081, Aug. 20, 1996, 96-2 CPD ¶ 74. In order to administer this rule, our Office stated that we may close a file without prejudice on any protest which has been filed before a statutorily required debriefing, upon appropriate notice by an agency that the statutorily required debriefing date has been offered.² Id.

At the time this rule was adopted, debriefings were required for procurements conducted on the basis of competitive proposals. See, e.g., 10 U.S.C. § 2305(b)(5)(A); see also Pub. L. No. 103-355, § 1014, 108 Stat. 3243, 3256 (Oct. 13, 1994). The statutorily required debriefing requirement was later expanded to

² While the agency has not yet offered a debriefing date, it has explained its rationale for delaying the debriefing. Agency Motion to Dismiss at 2. Where an agency states that it will offer and conduct a statutorily required debriefing, but has not yet done so, we will not review its determination that a debriefing is not currently practicable. See Federal Acquisition Regulation (FAR) § 15.506(a)(2).

certain orders made under task or delivery order contracts, such as the one at issue here. 10 U.S.C. § 2304c(d)(5); see also Pub. L. No. 110–181, § 843, 122 Stat. 3, 237 (Jan. 28, 2008). The policies underlying this rule are equally applicable to statutorily required debriefings related to the placement of task and delivery orders. Thus, we conclude that statutorily required debriefings under task and delivery order contracts are within the scope of the debriefing rule set forth in 4 C.F.R. § 21.2(a)(2). Consistent with this rule, PAI may raise any protest basis which is known or should have been known either before or as a result of the debriefing after the debriefing date offered to the protester, but not later than 10 days after the date on which the debriefing is held.

The protest is dismissed.

Susan A. Poling
General Counsel