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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Gorod Shtor

File: B-411284

Date: May 22, 2015

Olga Bajina for the protester.

Dennis J. Gallagher, Esq., Department of State, for the agency.

Louis A. Chiarella, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest issue raised subsequent to a post-award debriefing provided to a vendor in a simplified acquisition procurement for a commercial item is untimely where it was filed more than 10 days after the basis of protest was known; since the procurement was not one involving a required debriefing, the timeliness rules based on protests which challenge a procurement involving a required debriefing are not applicable.

DECISION

Gorod Shtor, of Moscow, Russia, protests the award of a contract to OOO Premier Design, of Moscow, Russia, under request for quotations (RFQ) No. SRS500-15-Q-0002, issued by the Department of State for drapery making and installation services at the U.S. Embassy Moscow. Gorod Shtor argues that the agency's evaluation of vendors' quotations was unreasonable, and that the resulting award decision was improper.

We dismiss the protest.

The RFQ was issued on November 24, 2014, under the commercial item acquisition and simplified acquisition procedures of Federal Acquisition Regulations (FAR) part 12 and subpart 13.5. The solicitation contemplated the award of an indefinite-delivery, indefinite-quantity (ID/IQ) contract to provide the U.S. Embassy Moscow with drapery making and installation services, to include materials, for a base year together with four 1-year options. The solicitation included a work statement, estimated quantities of items for each performance period, instructions to vendors

regarding the submission of quotations, and evaluation criteria.¹ Award was to be made on a lowest-priced, technically-acceptable basis. RFQ at 37.

Gorod Shtor and OOO Premier Design were among the vendors that submitted quotations by the January 12, 2015, closing date. On March 10, after finding it to be the lowest-priced, technically-acceptable vendor, the agency made award to OOO Premier Design. Protest, attach. 3, Award Notice, Mar. 10, 2015, at 1. Gorod Shtor's quotation, by contrast, was found to be both higher priced and technically unacceptable. Id.

Gorod Shtor received the agency's award notice on March 10. This notice informed the protester of the awardee's name and total contract price, and advised that Gorod Shtor's quotation contained weaknesses in the area of labor and financial resources. Id. The notice also informed the protester that, "[i]f you desire a debriefing, please refer to FAR provision 52.212-1(I)." Id. Gorod Shtor requested a debriefing on March 13, which the agency provided in writing on March 17. Id., attach. 4, Debriefing, Mar. 17, 2015. The debriefing informed Gorod Shtor of the reasons why the agency had found the vendor to be technically unacceptable. Id. Gorod Shtor then filed its protest with our Office on March 27.

Gorod Shtor challenges the agency's evaluation of OOO Premier Design's technical acceptability. The protester alleges that the awardee does not operate an established business with a permanent address and telephone listing as required by the solicitation.² Protest at 1. Gorod Shtor also argues that the agency's evaluation of the protester's technical quotation was unreasonable. Id. at 1-2.

As detailed below, we find Gorod Shtor's protest of the technical acceptability of OOO Premier Design to be untimely and, in light thereof, find the protester's challenge to the agency's evaluation of its own quotation to be without prejudice.

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 & Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4. Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual

¹ The solicitation included FAR clause 52.212-1, Instructions to Offerors--Commercial Items. RFQ at 33.

² We note that Gorod Shtor stated, as part of its March 13 debriefing request, that it did not believe that OOO Premier Design met the same RFQ requirements. Gorod Shtor Response to Dismissal Request, Apr. 3, 2015, attach. 5, Gorod Shtor Debriefing Request, Mar. 13, 2015.

requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 6; Dominion Aviation, Inc.--Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3. Concerning the timeliness of Gorod Shtor's challenge to the agency's evaluation of vendors' quotations, our Bid Protest Regulations require that protests not based upon alleged improprieties in a solicitation:

shall 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 ground basis which is known or should have been known either before or as a result of the debriefing, the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed no later than 10 days after the date on which the debriefing is held.

4 C.F.R. § 21.2(a)(2).

Gorod Shtor asserts that its protest is timely because its protest was filed within 10 days of receiving its debriefing. We find that the exception to our timeliness rules is not applicable here because the procurement was not one which involved a required debriefing.

Here, the procurement was conducted for the acquisition of a commercial item pursuant to the procedures set forth in FAR Part 13. Concerning the award of a purchase order, "[i]f a supplier requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the contract award decision shall be provided (see FAR 15.503(b)(2))."³ FAR § 13.106-3(d); see Divakar Techs., Inc., B-402026, Dec. 2, 2009, 2009 CPD ¶ 247 at 5 n.5. Similarly, while FAR clause 52.212-1(l) provides a list of required information to furnish the unsuccessful offeror "if a post-award debriefing is given," it does not mandate that a debriefing be provided.⁴ In sum, while a debriefing could be provided in the procurement here, it was not required, and what the agency was required to provide was not a debriefing.

³ As opposed to FAR § 15.506(d), FAR § 15.503(b)(2) informs contracting officers what information shall be furnished to unsuccessful vendors in a FAR Part 13 "brief explanation." FAR §§ 13.106-3(d); 15.503(b)(2).

⁴ While the information furnished under FAR clause 52.212-1(l) is essentially the same as required under FAR § 15.506(d), the debriefing is not mandatory.

As Gorod Shtor was aware of its challenge to the technical acceptability of OOO Premier Design by March 13, and did not file it with our Office until March 27 (and the debriefing exception is inapplicable here), that challenge is untimely. Moreover, we find that the protester is not an interested party to challenge the agency's evaluation of its own technical proposal. 4 C.F.R. § 21.0(a)(1). Even if Gorod Shtor's proposal was found to be technically acceptable, its price would remain higher than OOO Premier Design's.⁵ Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57.

The protest is dismissed.

Susan A. Poling
General Counsel

⁵ The protester has not challenged the agency's price evaluation.