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Decision

Matter of: Granite State Manufacturing

File: B-415730; B-415730.3

Date: February 23, 2018

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DIGEST

Protest challenging exclusion from competitive range is dismissed where the protester failed to timely challenge the basis for its exclusion, and is not an interested party to challenge the agency's competitive range determination.

DECISION

Allard Nazarian Group d/b/a Granite State Manufacturing (GSM), of Manchester, New Hampshire, protests its exclusion from the competitive range under request for proposals (RFP) No. N66604-17-R-0064 issued by the Department of the Navy for anti-submarine warfare combat systems. GSM challenges its exclusion and the agency's evaluation of another company's proposal.

We dismiss the protest.

On January 9, 2017, the Naval Sea Systems Command Program Executive Office for Integrated Warfare Systems issued the RFP to procure anti-submarine warfare combat systems. Agency Report (AR), Tab 1, RFP at 21. The RFP contemplated the award of an indefinite-delivery, indefinite quantity (IDIQ) contract that included fixed-price, cost-plus-fixed fee, and cost-reimbursable contract line item numbers (CLINs). Id. at 111-12. Award would be based on the best-value tradeoff consideration of three evaluation factors: (1) technical capability; (2) past performance; and (3) total evaluated

price/cost.¹ Id. at 108. Technical capability and past performance would be equal in importance, and when combined, these factors would be significantly more important than price/cost. Id. at 111.

The RFP stated that technical proposals would be evaluated for strengths, weaknesses, and deficiencies, and would be assessed a combined technical/risk rating. Id. at 112. The technical/risk rating, from highest to lowest, would be outstanding/blue, good/purple; green/acceptable; yellow/marginal; and red/unacceptable. Id. at 113. The RFP advised that a proposal that did not meet the solicitation requirements and contained one or more deficiencies would be rated unacceptable and would be unawardable. Id.

For price, the RFP outlined the requirements for the fixed-price and cost proposal submissions. Id. at 104-107. The agency would determine the total evaluated price based on the total evaluated price for the fixed-price CLINS and the cost realism value for cost-plus-fixed-fee and cost-reimbursable CLINs. Id. at 112.

On March 24, [DELETED] offerors, including GSM, submitted proposals. The source selection evaluation board (SSEB) evaluated GSM's proposal and determined that it was unacceptable.² AR, Tab 3, SSEB Technical Evaluation, at 1. In the competitive range determination, the Contracting Officer (CO), acting as the source selection authority (SSA), stated that GSM's proposal was not among the most highly-rated proposals because GSM's price was "so significantly high" that it could not be expected to lower its price during negotiations, and would not be included within the competitive range.³ AR, Tab 4, Competitive Range Determination, at 2-3.

On November 17, GSM was notified of its exclusion, and requested a debriefing, which was provided on November 21. CO Statement at 6. As relevant here, the debriefing identified the rationale from the competitive range determination for excluding GSM's proposal from the competitive range:

¹ The technical capability factor included seven subfactors: (1) technical approach; (2) hypothetical scenarios; (3) production approach; (4) facilities approach; (5) management approach; (6) engineering services personnel matrix/rationale; (7) small business participation. RFP at 100-01. Each subfactor would be equal in weight. Id. at 111.

² The SSEB determined that GSM's proposal contained zero strengths, four weaknesses, two significant weaknesses, and one deficiency. AR, Tab 3, SSEB Technical Evaluation, at 4.

³ The agency also determined that the proposals of the [DELETED] other offerors were unacceptable. AR, Tab 4, Competitive Range Determination, at 3. For the [DELETED] offerors included in the competitive range, the agency stated their proposals had a reasonable chance of being selected for award. Id.

The costs/prices proposed by GSM are so significantly high that it cannot reasonably be expected that it can lower its price during negotiations to a degree where it [. . .] would have a reasonable chance for award. . . . Therefore, GSM will be excluded from the competitive range as it is not among the most highly-rated proposals, nor is it reasonable to conclude that it will become so during discussions.

Protest, Attach. 3, Debriefing, at 15.⁴

On November 24, GSM protested to our Office, and supplemented its protest on December 1.

DISCUSSION

The protester challenges its exclusion from the competitive range, alleges disparate treatment, and contends that the agency's evaluation of various aspects of another competitor's proposal was flawed.⁵ We have reviewed the protester's arguments and conclude that none provides a basis to sustain the protest.

In challenging its exclusion from the competitive range, the protester's initial and supplemental filings assert that the agency's evaluation of GSM's technical proposal and past performance was flawed. Protest at 5-6, 7; Supp. Protest at 5-20, 22. Specifically, GSM challenges the weaknesses, significant weaknesses, and deficiency assessed by the SSEB. Supp. Protest at 5-20.

In response, the agency notes that although GSM's protests focus on the alleged shortcomings in the Navy's technical evaluation, GSM fails to address its "exorbitant price," which was cited in the debriefing and competitive range determination as the reason for GSM's exclusion. Memorandum of Law at 4.

In its comments, the protester contends, for the first time, that the agency's exclusion of GSM's proposal on the basis of price alone was unreasonable. Comments at 5.

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

⁴ Our Office added consecutive numbers to the pages of this document.

⁵ The protester also challenged the agency's evaluation of past performance. Protest at 6; Supp. Protest at 19. Although the agency substantively responded to this ground, the protester did not rebut this challenge in its comments. Accordingly, we dismiss this contention as abandoned. Avaya Gov. Solutions, Inc., B-409037 et al., Jan. 15, 2014, 2014 CPD ¶ 31 at 4.

the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2).

Here, in the November 21 debriefing, the agency informed the protester that its proposal was excluded from the competitive range based on GSM's "significantly high" price. See Protest, Attach. 3, Debriefing, at 15. However, the protester did not challenge the agency's determination until over a month later when it filed comments on January 2, 2018. The protester's failure to timely challenge the basis for its exclusion renders this allegation untimely.⁶ Based on the foregoing, we find no basis to challenge the agency's competitive range determination.

The protester also presents several other arguments that we conclude would not provide a basis to sustain the protest, even if our Office were to determine that the agency acted in error. For example, the protester contends that another competitor's participation in the procurement created a conflict of interest, and that the agency unequally evaluated proposals.

Based on the exclusion of GSM's proposal from the competitive range, we conclude that GSM is not an interested party for purposes of challenging the evaluation of other offers, or the competitive range determination. See 4 C.F.R § 21.0(a)(1); See VMD Sys. Integrators, Inc., B-412729, Mar. 14, 2016, 2016 CPD ¶ 88 at 4.

The protest is dismissed.

Thomas H. Armstrong
General Counsel

⁶ Based on this conclusion, we need not address the protester's challenge to the agency's technical evaluation of its proposal because the protester has failed to show competitive prejudice. Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice. General Dynamics One Source, LLC, B-409869.3, B-409869.4, Sept. 8, 2014, 2014 CPD ¶ 270 at 11. In this regard, even if we found merit to GSM's challenges to the agency's technical evaluation--which we do not reach here--this would not alter GSM's competitive position since GSM failed to timely challenge the basis for its exclusion from the competitive range, i.e., its price. See Financial Mgmt. Consulting--Recon., B-409592.2, Sept. 12, 2014, 2014 CPD ¶ 274 at 3.