



Decision

Matter of: Veterans2Work, Inc.

File: B-416935

Date: January 9, 2019

John Reynolds for the protester.
Melody A. Goldberg, Esq., and Donald C. Mobly, Esq., Department of Veterans Affairs, for the agency.
Elizabeth Witwer, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the terms of the solicitation and the ground rules under which the competition was conducted is dismissed as untimely where the protest was filed after the award of the contract.
2. Protest alleging that the agency improperly released the company's sensitive information as part of the solicitation is denied where the record reflects that the protester offered to provide the information to the agency for the express purpose of including the information in the solicitation's statement of work.

DECISION

Veterans2Work, Inc. (V2W), of Novato, California, protests the award of a contract to Predictive Index Arizona, Inc., of Scottsdale, Arizona, under request for quotations (RFQ) No. 36C250-18-Q-9856, issued by the Department of Veterans Affairs (VA) for services to support the Perfect Match program at the Chillicothe VA Medical Center. The protester argues that, in lieu of procuring the services competitively, the agency should have awarded a sole-source contract to the protester. The protester also objects to the agency's decision to award the contract on a lowest-priced, technically acceptable (LPTA) basis. Finally, V2W objects to the agency's alleged use of V2W's work as the basis for the solicitation's statement of work.¹

¹ No protective order was issued in this protest because V2W elected to proceed with its protest without counsel. A full version of the agency report was provided to our Office, (continued...)

We dismiss the protest in part and deny it in part.

BACKGROUND

The VA issued the RFQ on September 14, 2018, using the commercial acquisition procedures of Federal Acquisition Regulation (FAR) part 12 and the simplified acquisition procedures of part 13. RFQ at 1, 25; Agency Req. for Dismissal, Oct. 17, 2018, at 2. The RFQ sought quotations to assist the VA Medical Center in Chillicothe, Ohio, to develop a program referred to as the Perfect Match program. RFQ at 22.

The purpose of the Perfect Match program is to create job profiles for eight designated VA career fields that will assist the VA in identifying veterans who have the necessary personal skills to be successful in those career fields.² Id. The statement of work (SOW) requires the contractor to administer an aptitude test to high-performing VA employees currently working in the designated career fields in order to identify qualities and traits--apart from experience and education--that contribute to success in the respective career field. Id. at 23. Based on the results of the aptitude test, the contractor is required to create a job profile for each career field, which can be used by the VA to identify veterans who possess the necessary personal skills to be successful in the career field, even where the candidate may lack the necessary experience and education. Id. at 22-23; Agency Resp. to GAO Request for Information (RFI), Nov. 2, 2018, at 1-2. The stated objective of the Perfect Match program is to match a veteran candidate with a VA career field based upon personal skills. RFQ at 22; Agency Resp. to GAO RFI, Nov. 2, 2018, at 1-2.

The Perfect Match program was developed through the VA's Spark-Seed-Spread Innovation Funding Program, which provides three tiers of funding to support different levels of innovation efforts. Agency Resp. to GAO RFI, Nov. 2, 2018, at 2-3. Funding for the "spark" phase is intended to support proofs of concept or prototypes. Funding for the "seed" phase is to support pilot programs. Funding for the "spread" phase is to support diffusion of innovations across the VA. The intent of the Spark-Seed-Spread Innovation Funding Program is to test new ideas, products, and processes on a small scale before committing significant resources. Relevant here, the VA explains that, generally, "spark" phase projects are funded at \$10,000 or less and do not "go through

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while a redacted version of the report was furnished to the protester. We have nonetheless reviewed the entire unredacted record.

² The designated career fields are: (i) primary care, (ii) engineering, (iii) information technology, (iv) fiscal, (v) logistics, (vi) patient business services, (vii) human resources, and (viii) long-term care. RFQ at 22. The performance work statement requires the contractor to develop one profile for the first six career fields and two profiles for each of the latter two career fields for a total of 10 profiles. Id.

contracting;” whereas “seed” and “spread” phase projects are funded at higher amounts and are procured competitively.³ Agency Resp. to GAO RFI, Nov. 2, 2018, at 2.

It appears from the record that the protester performed a “spark” phase project similar to the Perfect Match program for the VA Medical Center in San Francisco, California. Protest at 1 and Exh. 2, Protester’s Proof of Concept; Agency Resp. to GAO RFI, Nov. 2, 2018, at 2. The protester called its project VetMatch and the protester’s proof of concept proposal was valued at or below \$10,000. Protest, Exh. 3, Protester’s Emails, at 142; Exh. 2, Protester’s Proof of Concept, at 5.⁴ As a result, the work was not procured competitively. Agency Resp. to GAO RFI, Nov. 2, 2018, at 2; Protest at 1.

In January 2018, the protester contacted the VA Innovation Specialist at the VA Medical Center in Chillicothe, Ohio, who was in the process of developing the Perfect Match program as a “seed” phase project.⁵ Agency Resp. to GAO RFI, Nov. 2, 2018, at 2, 3. The protester and the Innovation Specialist discussed the agency’s project and the work the protester had performed for the VA Medical Center in San Francisco to determine what the protester “could offer” to the agency and whether the protester’s VetMatch program might be a good candidate for a “seed” project. Id. at 3. The Innovation Specialist informed the protester that he would submit an application for funding to the VA Center for Innovation, which approves Spark-Seed-Spread Innovation Funding Program requests. Id. The Innovation Specialist also informed the protester that, if funding were received, the Innovation Specialist would still need to submit the paperwork to contracting. Id.

On January 23, the Innovation Specialist submitted an application for funding to the VA Center for Innovation. Id. On March 30, the Chillicothe Perfect Match program was approved for \$30,250 in “seed” project funding. Protest, Exh. 3, Protester’s Emails, at 6. The Innovation Specialist immediately informed the protester that the Perfect Match program had been funded. Id. at 5. The Innovation Specialist also informed the protester that he was submitting paperwork to contracting and recommending an award to the protester on a sole-source basis. Id. See also Agency Resp. to GAO RFI, Nov. 2, 2018, at 3 (The Innovation Specialist “approached contracting with a sole-source justification for a contract with Protester.”).

³ Contracting officers have specific authority to acquire, without competition, supplies and services at or below the micro-purchase threshold. 41 U.S.C. § 1902(d); FAR § 13.203(a)(2).

⁴ Citations to page numbers in the protest exhibits are to the electronic pdf pages.

⁵ The VA explains that, to support the Spark-Seed-Spread Innovation Funding Program, the agency has a community of VA employees called Innovation Specialists who are located at various locations throughout the United States. Agency Resp. to GAO RFI, Nov. 2, 2018, at 1. These employees design and develop projects that can be funded through the Spark-Seed-Spread Innovation Funding Program.

Despite the Innovation Specialist's desire to award the work to the protester on a sole-source basis, the contracting officer determined that a sole-source award to the protester was not appropriate. Id. The contracting officer issued the solicitation on the government-wide point of entry on September 14, 2018. Id. at 3, 5; RFQ at 1. Relevant here, the solicitation provided that award would be made on an LPTA basis. RFQ at 26. Quotations were due on September 20. Id. at 1.

In response to the RFQ, the agency received three quotations, including a quotation from the protester. Agency Req. for Dismissal, Oct. 17, 2018, at 2. The agency determined all quotations to be technically acceptable and awarded the contract to the lowest-priced vendor, Predictive Index Arizona, Inc., on September 25. Contracting Officer's Statement (COS) at 1. This protest followed on October 4.

DISCUSSION

V2W raises three primary arguments. First, V2W contends that the agency should have awarded a sole-source contract to V2W instead of procuring the services competitively. Protest at 1; Protester's Resp. to Agency Req. for Dismissal, Oct. 22, 2018, at 1. Second, the protester objects to the agency's decision to award the contract on an LPTA basis. Protest at 2. Finally, V2W objects to the agency's alleged use of V2W's work as the basis for the solicitation's SOW. Id. The protester's arguments concern, in essence, the terms of the solicitation and the grounds rules under which the competition was conducted. For the reasons discussed below, we conclude that they are untimely. In support of its final argument, the protester raises an alternative allegation, which we deny because the allegation is unsupported by the record.⁶

Our Bid Protest Regulations contain strict rules for the timely submission of protests. See 4 C.F.R. § 21.2(a). Pursuant to our timeliness rules, a protest based upon alleged improprieties in a solicitation, or allegedly flawed ground rules under which a competition is conducted, that are apparent prior to the closing time for receipt of proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1); DynCorp Int'l LLC,

⁶ Although our decision does not address every argument raised by V2W, we have considered all of the protester's arguments and conclude that none provides a basis upon which to sustain the protest. For instance, V2W contends that it was "informally awarded" the contract in March 2018 and that it commenced performance, relying "in good faith" upon the word of the Innovation Specialist that it would subsequently receive a sole-source contract. Protest at 3. V2W requests that our Office compensate it for work already performed. Id. Whether V2W is entitled to payment for work performed is a matter of contract administration that our Office does not review. 4 C.F.R. § 21.5(a). Rather, matters of contract administration are within the discretion of the contracting agency and are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978, 41 U.S.C. §§ 7101-7109, by a cognizant board of contract appeals or the United States Court of Federal Claims. 4 C.F.R. § 21.5(a). See Service Connected, Inc., B-416324, June 11, 2018, 2018 CPD ¶ 208 at 6.

B-415349, Jan. 3, 2018, 2018 CPD ¶ 12 at 7. A protester may not wait until after an award has been made to protest alleged flaws in the procurement's ground rules that are apparent prior to submission of quotations. See DynCorp Int'l LLC, supra.

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 the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. More specifically, underlying our timeliness rules is the principle that challenges to the fundamental ground rules by which a competition is conducted should be resolved as early as practicable during the solicitation process.⁷ A Squared Joint Venture, B-413139, B-413139.2, Aug. 23, 2016, 2016 CPD ¶ 243 at 6.

As explained above, V2W argues that it should have been awarded a sole-source contract for the Perfect Match program. In this regard, V2W alleges that the agency told V2W in March 2018 that it would be awarded a sole-source contract. Protest at 1-2. V2W also alleges that there were numerous exchanges between the protester and the agency over several months that support an understanding on both sides that V2W would be awarded the contract. Moreover, V2W argues that it was previously awarded the "spark" phase project on a sole-source basis and had no reason to believe that the award of the "seed" phase project would be any different. Id.; Protester's Resp. to Agency Req. for Dismissal, Oct. 22, 2018, at 1. V2W contends that the agency's decision to competitively procure the requirement was "grossly unfair." Protest at 3.

We construe V2W's allegation to be an untimely challenge to the ground rules under which the competition was conducted. The crux of V2W's argument is that no competition should have been required. To the extent V2W believed that the agency should have awarded it a sole-source contract in lieu of competing the requirement, V2W was required to challenge the agency's decision by filing a protest prior to the deadline for submissions of quotations. 4 C.F.R. § 21.2(a)(1). Here, the closing date for submission of quotations was September 20 and the protest was filed on October 4. Accordingly, V2W's challenge to the agency's decision to competitively procure the requirement is dismissed as untimely.⁸

⁷ This principle promotes fundamental fairness in the competitive process by preventing an offeror from taking advantage of the government, as well as other offerors, by waiting silently only to spring forward with an alleged defect in an effort to restart the procurement process, potentially armed with increased knowledge of its competitors' position or information. Blue & Gold Fleet, L.P. v. United States, 492 F.3d 1308, 1313-14 (Fed. Cir. 2007). It also promotes efficiency by ensuring that concerns regarding a solicitation are raised before contractor and government resources are expended in pursuing and awarding the contract, thus avoiding costly and unproductive litigation after the fact. Id.

⁸ Although the record supports the protester's claim that it was informed in March 2018 that the Innovation Specialist would recommend a sole-source award to the protester,

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Additionally, we do not find that a protest concerning alleged competitive harm in the form of greater competition for government requirements to fall within the scope of our jurisdiction under the Competition in Contracting Act of 1984, which requires us to ensure that the statutory requirements for full and open competition are met--not to protect any interest a protester may have in more restrictive specifications. Virginia Elec. & Power Co.; Baltimore Gas & Elec. Co., B-285209, B-285209.2, Aug. 2, 2000, 2000 CPD ¶ 134 at 7-8. In this regard, our Office generally does not permit a protester to use our Bid Protest function to advocate for more restrictive, rather than more open, competitions for government requirements. DNC Parks & Resorts at Yosemite, Inc., B-410998, Apr. 14, 2015, 2015 CPD ¶ 127 at 12.

Next, V2W objects to the agency's decision to award the contract on a LTPA basis. Protest at 2. The protester contends that the "more appropriate standard in this case would have been Best Value, where the focus would have been, rightly, on the far more significant benefits that would have resulted from our approach." Id. As noted above, the solicitation clearly provided that award would be made on an LPTA basis. RFQ at 26. Accordingly, to the extent V2W disagreed with the solicitation's terms, it was required to protest the terms prior to the deadline for submission of quotations, which it did not do. 4 C.F.R. § 21.2(a)(1). This ground is dismissed as untimely.

Finally, V2W objects to the agency's alleged use of V2W's work as the basis for the solicitation's SOW. Protest at 2. The nature of the protester's objection is difficult to decipher from the protest. On one hand, the protester seems to argue that the SOW was overly generic and did not include details specific to the protester's solution, which, had it contained such details, would have ensured that the protester was awarded the requirement.⁹ See id. at 3. To the extent the protester is objecting to the generic nature

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see Protest, Exh. 3, Protester's Emails, at 5, the record also reflects that the agency subsequently informed the protester on numerous occasions that the requirement would be procured competitively and that the protester would be required to submit a quotation for the work. See e.g., Protest, Exh. 1, Protester's Summary of July 16 Conversation with Innovation Specialist. Moreover, the record reflects that V2W understood as early as July 2018 that the requirement would be solicited competitively. Protest at 2 ("It was only in late July that . . . we [] were told that we would have [to] compete for the project we created, designed, and already put considerable money and effort into, against a field of competitors with no prior involvement."); Protest, Exh. 3, Protester's Emails, at 2, 3, 89, 91. See also Protester's Resp. to Agency Req. for Dismissal, Oct. 22, 2018, at 2 (conceding that it was notified of agency's decision to competitively procure the required "before the deadline for contracting[.]"); Protester's Resp. to GAO RFI, Nov. 6, 2018, at 2 (acknowledging that it learned in July that "the funding had in fact not been awarded, but rather would have to be secured via competitive bid."); id. at 8.

⁹ For instance, V2W claims that, in using V2W's "creative product and hard work" as the basis for the RFQ, the agency "omit[ed] all of the details, conveyed over months in
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of the SOW, the protester is objecting to the terms of the solicitation, which it was required to challenge prior to the deadline for submission of quotations. 4 C.F.R. § 21.2(a)(1).

On the other hand, V2W seems to contend that the work it provided to the agency contained trade secrets related to the company's predictive analytic approach, which the agency released in the RFQ without V2W's permission. Protest at 2, 3. In this regard, the protester contends that it would never have shared its proprietary information with the agency had it "suspected this project would ultimately be put out for bid." Protester's Resp. to GAO RFI, Nov. 6, 2018, at 2; Protest, Exh. 3, Protester's Emails, at 2. To the extent V2W is contending that the agency released the company's sensitive information in the RFQ without its permission, the record does not support the protester's contentions. Instead, the record reflects that the protester offered to provide this information to the agency for the express purpose of including the information in the SOW.¹⁰ Accordingly, this protest allegation is denied.

The protest is dismissed in part and denied in part.

Thomas H. Armstrong
General Counsel

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conversations and written correspondence, that clearly differentiated our approach from those needing only to satisfy highly coarsened requirements." Protest, Exh. 3, Protester's Emails, at 2. The protester also claims that "[h]ad we known the rules from the start, we would have created a statement of work that emphasized the outcome we anticipated and enumerated the many details that would ensure results that far exceeded those possible by any 'vendor.'" Protest at 3. See also Protester's Resp. to Agency Req. for Dismissal, Oct. 22, 2018, at 4 ("Had we known the risks created by using our work to put the project out to public bid, we would have taken much greater care in preparing the specifications.").

¹⁰ In mid-July, the Innovation Specialist explained that the VA's contracting office wanted to "rewrite the SOW for the contract" because the contracting office needed "something different to publish, something others could bid for if they offer similar services." Protest, Exh. 1, Protester's Summary of July 16 Conversation with Innovation Specialist, at 1. The Innovation Specialist further explained that the SOW for the project needed to be "rewritten and made less specific to your product[.]" Protest, Exh. 3, Protester's Emails, at 14-15. The agency could not use the protester's "spark" phase project, i.e., "Perfect Match". Protest, Exh. 1, Protester's Summary of July 16 Conversation with Innovation Specialist, at 1. In response, the protester agreed to "send the content you might use in your SOW." Id. at 2. Hence, the email traffic between the parties supports the conclusion that the protester knew that its work would be used as the basis for the SOW.