



Decision

Matter of: VAS Realty, LLC--Reconsideration

File: B-417142.2

Date: April 12, 2019

Christopher R. Shiplett, Esq., Randolph Law, PLLC, for the requester.
Glenn G. Wolcott, Esq., April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where requester has not demonstrated that dismissal of its prior protest was inconsistent with our timeliness rules.

DECISION

VAS Realty, LLC, of Cranston, Rhode Island, requests that we reconsider our decision in VAS Realty, LLC, B-417142, Dec. 26, 2018 (unpublished decision), wherein we dismissed VAS Realty's protest challenging the General Services Administration's (GSA) exclusion of VAS's proposal from the competitive range, and the award of a lease to another firm, pursuant to request for lease proposals No. 7RI2043 for building space in Rhode Island. VAS asserts that our decision was based on an erroneous interpretation of our timeliness rules.

We deny the request.

The agency initially published the solicitation in September 2017. Following various solicitation revisions and amendments, final revised proposals were submitted in July 2018. On October 26, GSA notified VAS that a lease had been awarded to another firm. On October 29, VAS timely submitted a request for a written debriefing, providing specific questions for which it sought responses. Protest at 1. On November 9, the agency offered to provide an in-person debriefing or a teleconference debriefing on either November 15 or November 20. Protest, exh. 1, at 5. VAS declined to participate in either of the offered debriefings, reiterating its request that a debriefing be provided in writing. On November 20, VAS renewed its request for a written debriefing. On November 27, the agency provided VAS with a written debriefing, as requested, specifically responding to each of the questions VAS had presented.

On November 26--prior to receipt of the agency's written debriefing--VAS submitted its protest to our Office.¹ Following receipt of the debriefing, VAS did not submit a protest to our Office. On December 26, we dismissed VAS's November 26 protest for failure to comply with our timeliness rules.

In seeking reconsideration of that decision, VAS makes various assertions regarding how our timeliness rules should be applied. We have considered all of VAS's arguments and conclude that dismissal of its protest was appropriate, as explained below.

Our Bid Protest Regulations provide that, generally, post-award protests must be filed within 10 days after the basis for protest is known. 4 C.F.R. § 21.2(a)(2). However, the regulations provide an exception for protests challenging a procurement in which a debriefing is requested and required. With regard to such protests, our Regulations provide that "the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held."² *Id.* Further, VAS's reconsideration request expressly acknowledges the following language that GAO published in the Federal Register explaining this provision:

[T]o address concerns regarding strategic or defensive protests, and to encourage early and meaningful debriefings, GAO provides in paragraph (a)(2) of Sec. 21.2 that protesters shall not file an initial protest prior to the debriefing date offered to the protester, but must file the initial protest not later than 10 days after the date on which the debriefing is held. In order to administer this rule, our Office 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. We anticipate that this debriefing will normally occur on the first date offered by the agency. However, in the event that the agency subsequently agrees to another date, the debriefing held on that date will be used as the basis for determining the timeliness of the protest.

61 Fed. Reg. 39,040 (July 26, 1996).

Here, it is clear that, since VAS's November 26 protest could not reflect receipt of any post-award debriefing information, the protest had to have been based on information

¹ As noted in VAS Realty, LLC, *supra*, the protest was submitted at 6:37 p.m. on November 26, and was therefore docketed as having been filed on November 27. See 4 C.F.R. § 21.0(g) ("A document is filed on a particular day when it is received in [the electronic protest docketing system] by 5:30 p.m., Eastern Time.").

² This rule is consistent with congressional intent that vendors receive statutorily required debriefings before deciding whether or not to file a protest. See The Real Estate Ctr., B-274081, Aug. 20, 1996, 96-2 CPD ¶ 74.

that VAS knew at the time it was notified of award to another firm--that is, October 26. Calculated from that date, and without considering the exception regarding requested and required debriefings, it is clear that VAS's November 26 protest would not be considered timely filed.³ See 4 C.F.R. 21.2(a)(2).

Similarly, taking into consideration application of the regulatory exception for protests that challenge awards for which a debriefing is requested and required, it is clear that VAS's protest was premature. Specifically, it is undisputed that: this procurement was conducted using negotiated procedures; VAS timely sought a written debriefing; the agency provided the requested debriefing on November 27; VAS's protest was filed before it received the debriefing; and VAS did not file a protest with our Office within 10 days following the debriefing. On this record, we must conclude that VAS's protest was untimely with regard to assertions it knew at the time it filed its protest, and premature in the context of the debriefing it requested and subsequently received.⁴ Although VAS could have filed a protest within 10 days after having received the November 27 debriefing, it did not.⁵ Accordingly, our decision to dismiss the protest was consistent with our regulations.

The reconsideration request is denied.

Thomas H. Armstrong
General Counsel

³ Even calculating from November 9--the date the agency offered two in-person debriefing dates and a teleconference option (all of which VAS declined)--the protest was not filed within 10 days from the date VAS knew of its bases for protest.

⁴ In applying the extended debriefing procedures, we consider a protest to be premature until the conclusion of the entire debriefing process, and we recognize a protest filed afterward as timely, so long as it is filed within the timeliness requirements. See Celeris Systems, Inc., B-416890, Oct. 11, 2018, 2018 CPD ¶ 354 at 1-2.

⁵ The requirement to renew protest allegations following receipt of a debriefing reflects the reality that a debriefing may resolve the protester's previously-expressed concerns.