



Decision

Matter of: F-Star Zaragosa Port, LLC; F-Star Socorro Holding, LLC

File: B-417414; B-417414.2

Date: April 15, 2019

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for the agency.
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Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests challenging the terms of a pre-solicitation notice are dismissed as premature where the record shows that the agency has not yet made a final decision regarding its needs and has not yet issued a solicitation.

DECISION

F-Star Zaragosa Port, LLC, and F-Star Socorro Holding, LLC, both located in Scottsdale, Arizona, protest the terms of pre-solicitation notice No. 9TX3160, issued by the General Services Administration (GSA), Public Buildings Service, seeking expressions of interest to provide leased warehouse space for a federal tenant agency. The protesters refer to the notice as a “solicitation” and contend that the “solicitation’s” specifications are unduly restrictive of competition and that the agency did not afford potential offerors sufficient time to respond to the “solicitation.”

We dismiss the protests as premature.

On March 8, 2019, GSA posted a pre-solicitation notice on the Federal Business Opportunities (FedBizOpps.gov) website, seeking expressions of interest to provide leased warehouse space for a federal tenant agency. Agency Request for Dismissal, Apr. 5, 2019, Exh. 1, Notice No. 9T3160, at 1. Responses to the agency’s notice were due by 4:00 p.m. Eastern Time on March 22, 2019. Id.

On March 22, F-Star Zaragosa Port and F-Star Socorro Holding each filed a protest with our Office, which we docketed as B-417414 and B-417414.2, respectively. Our Office consolidated the protests on April 9. Although the allegations raised by the two

protesters are not identical, both protesters generally allege that the specifications are unduly restrictive of competition and that the agency set an unreasonably short “solicitation response time.” See e.g., F-Star Zaragosa Port’s Protest at 2. Throughout their protests, the protesters refer to the notice as the “solicitation.”

On April 5, the agency requested dismissal of the protests as premature. The agency represents that it has not yet issued a solicitation for the requirement and that the pre-solicitation notice “was issued in order to help ascertain the availability of potentially acceptable properties on the current market and to determine whether a future solicitation should be issued.” Agency Req. for Dismissal at 2 (emphasis omitted). The agency further represents that any “requirements” in the notice “are not binding and are not necessarily the same as those that would appear in a future solicitation.” Id. at 3 (emphasis omitted). The protesters did not respond to the agency’s request for dismissal.

We dismiss the protests. Contrary to the protesters’ assertions, the record reflects that the notice issued by GSA on March 8 is not a solicitation for the award of a contract. Instead, it is a pre-solicitation notice seeking expressions of interest. Our Office has explained that such pre-solicitation notices are not solicitations. See AeroSage, LLC, B-415893, B-415894, Apr. 17, 2018, 2018 CPD ¶ 142 at 4-5 (explaining that “a sources sought notice is a request for information by the agency and not a solicitation that anticipates the award of a contract”); Onix Networking Corp., B-411841, Nov. 9, 2015, 2015 CPD ¶ 330 at 5 (concluding that a request for information provided to prospective vendors is not a “solicitation that embodies [the agency’s] actual requirements”); Sigmatech, Inc., B-296401, Aug. 10, 2005, 2005 CPD ¶ 156 at 4 (finding that a “sources sought notice is not a solicitation”).

Importantly, a pre-solicitation notice does not constitute a procurement action that our Office may independently review. Pancor Corp., B-234168, Mar. 29, 1989, 89-1 CPD ¶ 328 at 2 (concluding that a sources sought notice cannot be reviewed under GAO’s bid protest function). Rather, our jurisdiction is limited to considering protests involving solicitations already issued by federal agencies and awards made or proposed to be made under those solicitations. See Competition in Contracting Act of 1984, 31 U.S.C. § 3551(1); MINACT, Inc., B-414615, B-414615.2, July 12, 2017, 2017 CPD ¶ 221 at 5; East West, Inc., B-412719.2 et al., June 21, 2016, 2016 CPD ¶ 170 at 8; Pancor Corp., supra.

Accordingly, because the agency has not yet issued a solicitation, the protesters’ allegations merely anticipate improper agency action and thus are dismissed as premature. Lockheed Martin Sys. Integration--Owego, B-287190.2, B-287190.3, May 25, 2001, 2001 CPD ¶ 110 at 15 n.10 (dismissing as premature challenges to a sources sought notice where solicitation had not been issued). See Onix Networking Corp., supra (finding that a protest challenging the terms of a pre-solicitation request for information “would have been premature, since no solicitation ha[d] yet been issued”); CYIOS, Inc., B-402728.3, July 13, 2012, 2012 CPD ¶ 205 at 4 n.6 (protest dismissed as premature where agency had not yet issued solicitation); Sigmatech, Inc., supra.

If, in the future, the agency takes concrete action that may properly form the basis for a valid bid protest, such as the issuance of a solicitation, the protesters may file a protest with our Office at that time subject to our Bid Protest Regulations. See Tri-Ex Tower Corp., B-245877, Jan. 22, 1992, 92-1 CPD ¶ 100 at 3; Brazil Van & Storage Corp., B-241327.2, Oct. 26, 1990, 90-2 CPD ¶ 342 at 1-2.

The protests are dismissed.

Thomas H. Armstrong
General Counsel