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Decision

Matter of: MartinFederal Consulting, LLC

File: B-420626

Date: May 11, 2022

Jerome S. Gabig, Esq., Richard J.R. Raleigh, Jr, Esq., Christopher L. Lockwood, Esq., Wilmer & Lee, P.A., for the protester.

Jonathan T. Williams, Esq., Katherine B. Burrows, Esq., Eric A. Valle, Esq., and Patrick T. Rothwell, Esq., Piliero Mazza, for Altus Engineering, LLC, the intervenor.

Debra J. Talley, Esq., Department of the Army, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's speculation that awardee proposed to meet the solicitation's experience requirements through a subcontractor fails to state a valid basis for protest where the solicitation permitted an offeror to demonstrate compliance with the solicitation's requirements through proposed subcontractors.
 2. Protester's speculation that awardee will subcontract more than 50 percent of the contract requirements fails to state a valid basis for protest where the alleged subcontractor qualifies as a small business under the solicitation's applicable North American Industrial Classification System (NAICS) code, and the solicitation's limitation on subcontracting is inapplicable to such entities.
 3. Protester's assertion that workshops conducted by awardee's alleged subcontractor created an organizational conflict of interest fails to state a valid basis for protest.
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DECISION

MartinFederal Consulting, LLC, of Huntsville, Alabama, protests the award of a contract to Altus Engineering, LLC, by the Department of the Army, Army Materiel Command,

pursuant to request for proposals (RFP) No. W31P4Q-22-R-0042,¹ for the performance of analytical and testing services supporting the Army's oil analysis program.² Martin, the incumbent contractor, complains that award to Altus was improper because Altus lacks the requisite experience and intends to subcontract more than 50 percent of the contract requirements. Martin also asserts that the agency failed to properly consider an alleged organizational conflict of interest.

We dismiss the protest.

BACKGROUND

In July 2021, the agency issued the solicitation as a total small business set-aside,³ seeking proposals to operate and maintain laboratories in designated locations throughout the world. RFP at 2. The solicitation provided for award on the basis of a best-value tradeoff between the following evaluation factors: technical,⁴ staffing plan, and price.⁵

Of relevance here, the solicitation provided that "The offeror shall have a minimum of 5 years work experience providing lubricant analysis services." RFP at 50. The solicitation also provided that offerors could form teaming arrangements; stated that "[t]he offeror shall clearly describe its own capabilities and those specialized services or capabilities that will be provided by any subcontractor"; and added that the offeror "must demonstrate clearly that it can self-perform, or perform through its teaming or subcontractor arrangements." *Id.* at 49, 51.

¹ Martin states that the solicitation was initially issued as W31P4Q-21-R-0059, but was subsequently cancelled and reissued as W31P4Q-22-R-0042. Protest at 2.

² The program "is a maintenance diagnostic program that monitors lubricant condition and detects impending component failures." Protest exh. 2, RFP at 2.

³ The solicitation incorporated the provisions of Federal Acquisition Regulation (FAR) clause 52.219-14, Limitation on Subcontracting, and provided that North American Industrial Classification System (NAICS) code number 541380, Testing Laboratories, is applicable to this procurement. *Id.* at 3, 22-23.

⁴ Under the technical factor, the solicitation established three subfactors: analytical services to customers; kinematic viscometer standard operating procedure; and training plan. *Id.* at 53.

⁵ The solicitation provided that staffing plan was slightly more important than technical and that, when combined, the non-price evaluation factors were slightly more important than price.

Proposals were received from multiple offerors, including Martin and Altus.⁶ Thereafter, the agency evaluated Martin’s and Altus’s proposals as follows:

	Martin	Altus
Technical	Marginal	Good
Staffing Plan	Good	Outstanding
Price	\$15,281,163	\$17,859,258

Protest exh. 1, Debriefing at 19.

In assessing Martin’s proposal as marginal under the technical evaluation factor,⁷ the agency identified two weaknesses and one significant weakness. Among other things, the agency concluded that Martin’s proposal “lack[ed] the level of detail required to ensure accuracy and standardization between operators.” *Id.* at 20. Thereafter, the agency selected Altus for award without conducting discussions.⁸ Martin’s protest followed.

DISCUSSION

Martin asserts that award to Altus was improper because: Altus lacks the requisite experience; Altus intends to subcontract more than 50 percent of the contract requirements; and the agency failed to properly consider an organizational conflict of interest.⁹ As discussed below, Martin’s allegations fail to state valid bases for protest.

⁶ Proposals submitted by other offerors are not relevant to this protest and are not further discussed.

⁷ A rating of marginal was assigned under the technical evaluation factor where a proposal “has not demonstrated an adequate approach and understanding of the requirements, and/or risk of unsuccessful performance is high.” Protest, exh. 1, Debriefing at 13.

⁸ The solicitation advised offerors that the agency intended to make award without conducting discussions. RFP at 49.

⁹ Additionally, Martin’s protest challenged the agency’s evaluation of Martin’s proposal, including its rating of marginal under the technical evaluation factor; however, Martin subsequently withdrew those allegations. Notice of Withdrawal, Apr. 19, 2022. Further, Martin’s protest criticizes the adequacy of the agency’s responses to Martin’s debriefing questions. However, an agency’s compliance with debriefing requirements does not relate to the validity of a contract award, and will not be considered pursuant to our bid protest procedures. See, e.g., *Alpine Companies, Inc.*, B-419831 *et al.*, June 8, 2021, 2021 CPD ¶ 227 at 3 n.1; *HpkWebDac*, B-291538.2, Jan. 22, 2003, 2003 CPD ¶ 28 at 2.

Experience

Martin first speculates that Altus “teamed with MRG Laboratories of York, Pennsylvania,”¹⁰ and asserts “with relative certainty” that Altus does not, itself, have a minimum of 5 years work experience providing lubricant analysis services. Protest at 5-6; see Protest exh. 3, Mathis Declaration at 7. Nonetheless, Martin expressly acknowledges that “MRG Laboratories is respected within the industry and probably has ‘a minimum of 5 years work experience providing lubricant analysis services.’” *Id.* Notwithstanding its acknowledgement regarding the experience of Altus’s alleged subcontractor, Martin asserts that Altus’s proposal failed to comply with the solicitation requirements on the basis that Altus--not a subcontractor--was required to satisfy the solicitation’s experience requirements. Martin Response to Dismissal Request, Apr. 14, 2022, at 6.

The agency responds that the terms of the solicitation placed offerors on notice that solicitation requirements could be met through an offeror’s team members or subcontractors.¹¹ Agency Request for Dismissal, Apr. 13, 2022, at 2-3. Accordingly, the agency maintains that, even if Martin’s speculation regarding Altus’s proposal of MRG as a subcontractor were accurate, Martin’s protest fails to state a valid basis, since Martin expressly concedes that MRG, Altus’s purported subcontractor, complies with the solicitation’s experience requirements. *Id.*

Our Bid Protest Regulations require protesters to present protest grounds that are factually and legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f); see also *System Dynamics Int’l, Inc.--Recon.*, B-253957.4, Apr. 12, 1994, 94-1 CPD ¶ 251 at 4. More specifically, where a protester’s allegations are based on speculation, factual inaccuracies, or flawed legal assumptions, we will summarily dismiss a protest without requiring the agency to submit a report. *Id.* In this regard, our bid protest procedures do not permit a protester to embark on a fishing expedition for protest grounds merely because it is dissatisfied with the agency’s source selection decision. See, e.g., *Alascom, Inc. – Second Recon.*, B-250407.4, May 26, 1993, 93-1 CPD ¶ 411 at 4.

Here, as discussed above, the terms of the solicitation placed offerors on notice that solicitation requirements could be met through an offeror’s team member or subcontractor. Among other things, the solicitation provided that an offeror “must demonstrate clearly that it can self-perform, or perform through its teaming or

¹⁰ Martin’s president asserts: “[B]y networking within the industry, I can state with relative confidence that Altus teamed with MRG Laboratories of York, PA.” Protest, exh. 3, Mathis Declaration at 7.

¹¹ As noted above, the solicitation provided that offerors could form teaming arrangements; stated that “[t]he offeror shall clearly describe its own capabilities and those specialized services or capabilities that will be provided by any subcontractor”; and added that the offeror “must demonstrate clearly that it can self-perform, or perform through its teaming or subcontractor arrangements.” *Id.* at 49.

subcontractor arrangements.” RFP at 49. Thus, even if Martin’s speculation regarding Altus’s proposal of MRG to perform as a subcontractor is accurate, Martin’s protest fails to state a valid basis, since Martin expressly concedes that MRG complies with the solicitation’s experience requirements. In short, accepting for the sake of argument Martin’s assertions regarding the content of Altus’s proposal, its protest challenging Altus’s compliance with the experience requirement fails to state a valid basis for protest. Accordingly, this allegation is dismissed.

Evaluation of Altus’s Proposal

Next, Martin asserts that, because Altus has “no experience providing lubricant analysis services,” its proposal “on its face” violated the provisions of FAR clause 52.219-14, titled “Limitation on Subcontracting.”¹² Protest at 9-10. Echoing its earlier speculation that Altus proposed MRG as a subcontractor, Martin asserts that Altus will rely on MRG to perform more than 50 percent of the contract requirements which, according to Martin, was precluded by FAR clause 52.219-14 and should have “rendered [Altus’s proposal] unacceptable.” *Id.* at 10.

The agency responds that Martin’s speculation regarding Altus’s alleged violation of FAR clause 52.219-14 reflects a flawed understanding of those requirements. Agency Request for Dismissal, Apr. 13, 2022, at 5. More specifically, the agency points out that FAR clause 52.219-14 (and the terms of this solicitation) provide that a prime contractor “will not pay more than 50 percent [of the contract value] to subcontractors *that are not similarly situated entities.*” (Emphasis added.) FAR clause 52.219-14(e)(1); see RFP at 22-23. The agency further points out that the FAR (and this solicitation) expressly define “similarly situated entities” as those that have “the same small business program status as that which qualified the prime contractor for the award.” FAR clause 52.219-14(b); see RFP at 22. Finally, the agency points out that the solicitation established NAICS code 541380, Testing Laboratories, as the basis for qualifying an offeror to compete for award, see RFP at 3, and presents unrebutted evidence that MRG is a registered small business under NAICS code 541380. See Agency Request for Dismissal, ex. B, Profile from SAM.gov. In short, the agency maintains that Martin’s speculation that Altus’s proposal reflected an intent to subcontract more than 50 percent of the contract value to MRG, and that this should have rendered Altus’s proposal unacceptable for violating FAR clause 52.219-14, fails to state a valid basis for protest. We agree.

As noted above, a protester must present protest grounds that are factually and legally sufficient, and where a protester’s allegations are based on speculation, factual inaccuracies, or flawed legal assumptions we will summarily dismiss the protest. 4 C.F.R. § 21.1(c)(4) and (f); *Systems Dynamics Int’l, Inc.--Recon., supra*. Here, as discussed above, Martin’s protest is based on its speculation that Altus proposed MRG to perform more than 50 percent of the contract requirements, and that FAR

¹² As noted above, FAR clause 52.219-14 was incorporated into the solicitation. See RFP at 22-23.

clause 52.219-14 and the terms of this solicitation precluded that proposed approach. Even if we accept Martin's speculation regarding the content of Altus's proposal, Martin's protest fails to state a valid basis since the record establishes that MRG qualifies as a "similarly situated entity" and, thus, is not subject to the subcontracting limitations that Martin maintains were violated. Accordingly, Martin's protest based on Altus's alleged violation of the solicitation's subcontracting limitations does not warrant further consideration and is dismissed.¹³

Alleged Organizational Conflict of Interest

Finally, based on the assumption that Altus proposed MRG as a subcontractor, Martin asserts that the agency failed to consider an alleged organizational conflict of interest (OCI). In this regard, Martin notes that MRG's internet website refers to "industrial training workshops and certification training" conducted by MRG, including training to assist individuals in obtaining a certification required by this solicitation.¹⁴ Protest at 7. Martin asserts that agency personnel may have received training from MRG; maintains that, through such training, MRG has "indirectly" contributed to the test procedures used by the Army's oil analysis program; and concludes:

If the Army were to accept defective lubricants because of flawed test procedures taught (or indirectly developed as a result of instruction) by MRG Laboratories, then MRG Laboratories would have an impaired objectivity organizational conflict of interest [which should be imputed to Altus]."

Protest at 7-8.

In short, Martin's protest asserts that: (1) MRG provides training courses to assist individuals in preparing for LLA Level II certification; (2) the certification is administered by a third-party that is not affiliated with either Altus or MRG; and (3) Army personnel may have taken MRG's training. Based on these assertions, Martin hypothesizes that

¹³ Martin similarly complains that it was unreasonable for the agency to evaluate Altus's proposal as good under the technical evaluation factor because this rating was "based on the capabilities of its subcontractor, MRG," and "MRG Laboratories was limited to performing less than 50% of the work." Protest at 11; Response to Dismissal Request at 8. As discussed above, Martin's assumption regarding the applicability of subcontractor limitations is flawed. Since its challenge to the evaluation of Altus's proposal is based on its flawed understanding of the solicitation requirements, its protest challenging the evaluation is dismissed.

¹⁴ Martin notes that the solicitation identifies several positions for which proposed personnel must have "Laboratory Lubricant Analyst (LLA) Level II" certification. Protest exh. 3, Mathis Declaration at 1-2. Martin acknowledges that the certification process is performed by the International Council for Machinery Lubrication (ICML), and does not suggest that the ICML has any affiliation with either Altus or MRG. Id. at 2.

“[i]f the Army were to accept defective lubricants because of flawed test procedures taught (or indirectly developed as a result of instruction) by MRG,” this would create an OCI for Altus/MRG. *Id.*

An impaired objectivity OCI arises where a firm’s work under a government contract could entail that firm evaluating its own work, either through an assessment of performance under another contract or an evaluation of proposals. FAR 9.505-3, 9.508; see *PURVIS Sys., Inc.*, B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7; *Aetna Gov’t Health Plans, Inc.; Foundation Health Fed. Servs., Inc.*, B-254397.15 *et al.*, July 27, 1995, 95-2 CPD ¶ 129 at 12-13.

Here, we reject Martin’s strained attempts to create a potential OCI. Even accepting, for the sake of argument, Martin’s assertion that Altus proposed MRG to assist in contract performance, nothing in Martin’s protest reflects a meaningful assertion that Altus/MRG’s work under the contract would entail evaluation of its own performance. To the contrary, Martin seems to suggest that the agency’s testing procedures are potentially flawed--but offers nothing to support such suggestion.¹⁵ On this record, Martin’s assertions regarding an alleged OCI fail to state valid protest bases and do not warrant further consideration.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

¹⁵ Martin’s assertion that MRG “indirectly” assisted in the development of the Army’s procedures does not create an OCI that would preclude award. See FAR 9.508(c), (d).