



Decision

Matter of: Griffin Resources, LLC

File: B-420474.2

Date: April 25, 2022

Christopher LaMont, Griffin Resources, LLC, for the protester.
Naticia Chapman Neely, Esq., Department of Veterans Affairs, for the agency.
Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest alleging agency is recompeting a requirement purportedly subject to ongoing litigation in a court of competent jurisdiction is dismissed where it is not clear that the protested solicitation is for the same requirement. In addition, if the protester is correct that the requirement here is the same as the requirement in litigation before the court, the protester is raising a matter for the court's review, not our Office.

DECISION

Griffin Resources, LLC, a service-disabled veteran-owned small business (SDVOSB) of Roseburg, Oregon, protests the terms of solicitation No. 36C24222Q0313, issued by the Department of Veterans Affairs for shred bin consoles. The protester contends that the solicitation seeks to procure the same scope of work as a previous contract that is currently the subject of litigation before the Court of Federal Claims.

We dismiss the protest because the protester has not alleged a violation of procurement law or regulation.

The protester alleges this solicitation for shred bins effectively duplicates the scope of a prior contract or contracts awarded to the protester. Protest at 2-6. By way of background, Griffin was previously awarded a contract for shredding and disposal services set aside for SDVOSBs. Agency Request to Dismiss at 2-5, Protest at 1-3. However, following award, the Small Business Administration's Office of Hearing and Appeals (OHA) concluded Griffin was unusually reliant on its subcontractor, and therefore was not an eligible SDVOSB for purposes of that contract. *Id.* On July 30, 2021, Griffin filed a complaint at the Court of Federal Claims challenging OHA's finding,

but did not seek a preliminary injunction or ask the agency to voluntarily stay procurement actions. *Id.*

The agency subsequently terminated Griffin's shredding and disposal services contract for the convenience of the government, but issued an interim contract to Griffin to maintain continuity of shredding and disposal services. Agency Request to Dismiss at 3-4. In January of 2022, the agency reconsidered its needs, and issued the current solicitation to procure shred bin consoles directly rather than continuing to seek shredding and disposal services. *Id.* On January 20, Griffin filed a protest of the terms of the solicitation with our Office, alleging the solicitation effectively duplicated the scope of an existing contract in litigation at the Court of Federal Claims and that the delivery terms of the solicitation were ambiguous. *Id.* On January 28, the agency indicated it would amend the solicitation to ensure the requirement is clearly stated, which rendered the protest academic, and we dismissed the protest. *Griffin Resources, LLC*, B-420474.1, Feb. 1, 2022 (unpublished decision). On March 24, 2022, the agency issued an amendment to the solicitation clarifying the delivery terms and establishing a new due date for quotations. Agency Request to Dismiss, exh. 6, Amendment 0001 to RFQ_0313. This protest followed.

Our Office's jurisdiction extends to allegations of violations of procurement laws or regulations. 31 U.S.C. § 3552. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Cybermedia Techs., Inc.*, B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. To achieve this end, our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(f). Here, the protester does not state legally sufficient grounds of protest because it has not explained in what way the agency has violated procurement law or regulation.

Preliminarily, we do not agree with the protester's contention that the current solicitation effectively duplicates the scope of the contract in litigation at the Court of Federal Claims. The current procurement seeks to purchase shred bin consoles with no service component, while the prior contract was for shredding and disposal services but involved no purchase of shred bin consoles. See Agency Request to Dismiss at 2, 6. Accordingly, while the underlying requirements may both be related to disposal of sensitive documents, the scope of the solicitation is entirely distinct from the prior contract.

Moreover, even assuming for the sake of argument that the scopes of the two efforts were identical, it is unclear what procurement law or regulation the agency is purportedly violating in this case. Because Griffin has not identified any procurement laws or regulations that bar the agency from resoliciting in these circumstances, this protest has not identified legally sufficient grounds of protest.

We also note, in the alternative, to the extent the protester is arguing that the agency is attempting to circumvent the Court of Federal Claims eventual judgment or foreclose

effective relief at the Court, that is a matter directly related to ongoing litigation at a court of competent jurisdiction. We will not decide a protest where the matter involved is the subject of litigation before a court of competent jurisdiction. Bid Protest Regulations, 4 C.F.R. § 21.11(b); *Oahu Tree Experts*, B-282247, Mar. 31, 1999, 99-1 CPD ¶ 69. Here, to the extent the protester's claims are that the agency's actions will frustrate or interfere with ongoing litigation at the Court of Federal Claims, the matter involved in the protest is currently before a court of competent jurisdiction and should be addressed in that forum.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel