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Decision

Matter of: Sierra7, Inc.; V3Gate, LLC

File: B-421109; B-421109.2; B-421109.3; B-421109.4

Date: January 4, 2023

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Gary J. Campbell, Esq., Miles A. McCann, Esq., and Joshua R. Turner, Esq., Perkins Coie LLP, for Minburn Technology Group, LLC; and Daniel R. Forman, Esq., and William B. O'Reilly, Esq., Crowell & Moring LLP, for AATD, LLC, the intervenors. Mellany Alio, Esq., and Reza Behinia, Esq., Department of Veterans Affairs, for the agency.

Kasia Dourney, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably found awardees' quotations compliant with the material requirements of the solicitation is denied where the record reveals that the agency's conclusions were reasonable and consistent with the solicitation requirements.
 2. Protest that the agency failed to meaningfully consider awardee's compliance with applicable cybersecurity requirements is denied where the agency reasonably relied on awardee's representation in this regard.
 3. Protest that the agency improperly engaged in additional clarification with one vendor, and then subsequently issued a solicitation amendment to change a solicitation requirement that vendor identified as overly restrictive is denied where additional clarification was proper, and the amendment was intended to enhance competition.
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DECISION

Sierra7, Inc., a service-disabled veteran-owned small business (SDVOSB) of Falls Church, Virginia, and V3Gate, LLC, also an SDVOSB of Colorado Springs, Colorado, protest the issuance of delivery orders to Minburn Technology Group, LLC, of Great Falls, Virginia, and AATD, LLC, of San Antonio, Texas, under request for quotations

(RFQ) No. 36C10B22Q0148, issued by the Department of Veterans Affairs (VA) for personal computers. The protesters challenge the agency's evaluation of quotations, contending that the awardees' quotations failed to comply with several material RFQ requirements. The protesters also assert that the VA conducted unfair and unequal exchanges, and improperly amended the solicitation to accommodate the needs of AATD. V3Gate further alleges that the agency failed to meaningfully consider AATD's compliance with cybersecurity requirements, and conducted a flawed responsibility determination.

We deny the protests.

BACKGROUND

The RFQ, issued on May 6, 2022, to the holders of the National Aeronautics and Space Administration (NASA) Solutions for Enterprise Wide Procurement (SEWP) V governmentwide acquisition contract, sought quotations for personal computers, including laptops, desktops, docking stations, incidental hardware, project/account management and warranty support services. Contracting Officer's Statement (COS) ¶ 2.¹ The requirement was set aside for SDVOSBs, and contemplated issuance of two fixed-price delivery orders to the lowest-priced, responsive, responsible vendor whose quotation conforms to the terms of the RFQ. *Id.* ¶ 3. The procurement here was conducted under the provisions of Federal Acquisition Regulation (FAR) subpart 16.5.

The RFQ included multiple, material technical requirements, including the requirement that proposed products be registered in the Electronic Product Environmental Assessment Tool (EPEAT)² registry, and be Energy Star-³ or Federal Energy Management Program (FEMP)-, certified. Agency Report (AR), Tab 9, RFQ amend. 5

¹ Throughout the decision, where a document has been produced in the agency reports for both Sierra and V3Gate protests, or where a document's content, in part or in whole, is the same for both protests, we will cite to that document without specifying the particular protest. Otherwise, where a particular document has been submitted or an argument has been raised only in a specific protest, we will cite to that document identifying the particular protest at issue.

² EPEAT is the world's leading electronics ecolabel. See <https://globalelectronicscouncil.org/epeat-registry-2/> (last visited on January 3, 2023). The EPEAT ecolabel is managed by the Global Electronics Council, which maintains the EPEAT Registry, listing products meeting certain environmental performance criteria related to, for example, energy use, recycling, or toxicity of products. *Id.*

³ Energy Star is a program managed by the U.S. Environmental Protection Agency that promotes energy efficiency, and provides information on the energy consumption of products and devices using various standardized methods. See <https://www.energystar.gov/> (last visited on January 3, 2023).

at 59. To demonstrate compliance with the RFQ's minimum technical requirements, vendors were required to complete a specification compliance matrix that was included as attachment A to the RFQ. The specification compliance matrix required vendors to provide the make, model, and part numbers for each proposed product; links to the original equipment manufacturer (OEM) specifications; and sufficient detail for the agency to evaluate conformance with the RFQ requirements. *Id.* at 58.

Vendors were advised to quote devices from only a single OEM. *Id.* at 18. The RFQ also stated that to avoid supply chain disruptions, the intended two awards were to be made to vendors quoting products manufactured by different OEMs. *Id.* at 57-58.

The solicitation reserved the agency's right to conduct the evaluation in the "most effective manner," including evaluating only the technical quotation of the lowest-priced vendor. RFQ at 57. After issuing the RFQ, the VA received multiple rounds of questions from interested vendors about the requirement, which resulted in multiple amendments of the solicitation. COS ¶¶ 3-5. On June 22, the agency received 10 quotations from SEWP V contract holders, including those from Sierra, V3Gate, Minburn, and AATD. *Id.* ¶ 6.

The VA first reviewed all price quotations to determine the evaluated price for each vendor, and each vendor's proposed OEM. *Id.* The agency then evaluated technical quotations, and commenced exchanges with all vendors, providing each an opportunity to clarify their initial quotations. *Id.* On August 15, all vendors provided responses to the clarification requests. *Id.* Then, the VA again evaluated price for each vendor, and proceeded to evaluate the two lowest-priced quotations from vendors that quoted different OEMs: Minburn, which quoted Dell brand products, and AATD, which quoted Lenovo brand products. *Id.*; *id.* ¶ 8.

On August 19, after evaluating these two quotations, VA issued another clarification request to AATD, asking the vendor to clarify its compliance with the RFQ requirement for matching dual wireless antennas. *Id.* ¶ 8. Upon review of AATD's response, VA concluded that the solicitation's wireless antennas requirement was overly restrictive, and as a result, on August 23, the agency amended the RFQ again to permit dual wireless antennas to be either internal or external, as long as dual antennas were supported. AR, Tab 11, RFQ amend. 6 at 2.

All vendors were provided an opportunity to revise their specification compliance matrix, and nine of them responded by submitting a revised document. *Id.*; COS ¶ 9. No vendor modified its proposed price or OEM. COS ¶ 9.

The agency again evaluated quotations submitted by the two lowest-priced vendors quoting different OEMs: Minburn, whose quotation was priced at \$418,781,635, and

AATD, which quoted \$423,294,243.⁴ AR, Tab 17, SSD at 6-7. Ultimately, the VA found Minburn to be the lowest-priced, responsive, responsible vendor, whose quotation conformed to the terms of the RFQ. *Id.*; COS ¶ 10. Additionally, the agency concluded that AATD was the next lowest-priced vendor quoting compliant products from a different OEM than the one quoted by Minburn. *Id.*

On September 16, the agency made two awards, to Minburn, and AATD, respectively. After requesting and receiving debriefings, Sierra and V3Gate protested the awards with our Office.⁵

DISCUSSION

Sierra and V3Gate raise multiple challenges to the evaluation of the awardees' quotations. They allege that the agency improperly found those quotations technically acceptable in multiple respects. The protesters also argue that the VA conducted unequal discussions and improperly amended the solicitation's wireless antenna requirements to favor AATD over other vendors.

Further, V3Gate contends that the VA did not meaningfully consider Lenovo's compliance with the cybersecurity requirements of FAR clause 52.204-25, and failed to perform a proper responsibility determination of AATD. We have considered all of the allegations raised by the protesters and find no basis to sustain the protests. Below, we discuss the protesters' principal contentions.

⁴ Both Sierra and V3Gate quoted Hewlett-Packard (HP) products. AR, Tab 17, Source Selection Decision (SSD)--Price Reasonableness at 5. All other eight vendors quoted products manufactured by Dell or Lenovo. *Id.* Sierra's total evaluated price was \$456,904,191, while V3Gate's total evaluated price was almost \$6 million lower, \$450,938,157. *Id.* Among the ten vendors that submitted quotations in response to this solicitation, Sierra's quotation was the ninth lowest-priced. *Id.*

⁵ Although the SEWP V RFQ here was issued by the VA, a civilian agency, for purposes of determining the applicable dollar value threshold for our Office's jurisdiction to hear protests in connection with the issuance or proposed issuance of a task or delivery order, we look to the authority under which an indefinite-delivery, indefinite-quantity (IDIQ) contract was issued, *i.e.*, title 10 or title 41. *Analytic Strategies, LLC; Gemini Indus., Inc.*, B-413758.2, B-413758.3, Nov. 28, 2016, 2016 CPD ¶ 340 at 5. The VA issued the SEWP V RFQ under a NASA IDIQ contract, and NASA is subject to the procurement provisions found in title 10 of the United States Code, rather than those found in title 41. *Analytic Strategies, LLC; Gemini Indus., Inc.*, *supra* at 2-3 n.2. Thus, because the value of the delivery orders at issue each exceed \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award contracts valued over \$25 million. 10 U.S.C. § 3406(f)(1)(B).

Sierra's Interested Party Status

The intervenor AATD argues that Sierra is not an interested party to challenge the awards because Sierra quoted a \$6 million higher price than the next-lowest priced vendor, V3Gate, which also quoted products from the same OEM, HP. AATD's Comments at 2-3; AATD's Supp. Comments at 2-3. AATD alleges that Sierra and V3Gate quoted exactly the same HP products and as a consequence, there is no plausible basis on which V3Gate's quoted products could be found technically unacceptable that would not also disqualify Sierra from award. AATD's Supp. Comments at 2 (*comparing* AR, Tab 20, Sierra att. A *with* AR, Tab 25, V3Gate att. A). Therefore, according to AATD, even if Sierra's protest had merit, V3Gate, rather than the protester, would be next in line for award. *Id.*

A disappointed vendor is not an interested party to challenge an award where, even if the protester's challenge had merit, a different vendor would be next in line for award ahead of the protester. See 4 C.F. R. § 21.0(a)(1); *Coley & Assocs., Inc.*, B-404034 *et al.*, Dec. 7, 2010, 2011 CPD ¶ 6 at 7. In other words, where an intervening vendor has a greater interest in the procurement than the protester, our Office generally considers the protester's interest to be too remote to qualify it as an interested party. See *CACI, Inc.--Federal*, B-419499, Mar. 16, 2021, 2021 CPD ¶ 125 at 5; *NCS Techs., Inc.*, B-416936, Jan. 11, 2019, 2019 CPD ¶ 56 at 3.

We have long declined, however, to dismiss a protest on the basis that the protester is not an interested party where the agency has not yet evaluated the intervening offerors' proposals or quotations for acceptability. See, e.g., *AllWorld Language Consultants, Inc.*, B-414244, B-414244.2, Apr. 3, 2017, 2017 CPD ¶ 111 at 3 n.2. As noted above, the agency only evaluated Minburn's and AATD's quotations for technical acceptability. Additionally, the VA did not substantively address whether Sierra and V3Gate quoted exactly the same HP products, as alleged by AATD, and generally did not put Sierra's interested party status in question. Further, Sierra alleged a number of differences between the products quoted by the two vendors. See Sierra's Resp. to Req. for Add'l Briefing at 3-4 (arguing, for example, that V3Gate quoted three designated [DELETED] and two distinct [DELETED] that failed to include required [DELETED], as opposed to Sierra's quotation that fully complied with the requirements).

In addition, we resolve any doubts about Sierra's interest here in favor of the protester. See *Wyle Labs., Inc.*; *Latecoere Int'l, Inc.*, B-239113, B-239113.2, Aug. 6, 1990, 90-2 CPD ¶ 107 at 6 n.4. Because the record does not establish that the intervening vendor is technically acceptable, and thus would necessarily be next in line for award ahead of the protester, we find that the protester is an interested party to challenge the awards in this procurement, being conducted on a lowest-priced, technically acceptable basis. *AllWorld Language Consultants, supra.*

Compliance with Technical Specifications

The protesters allege that Minburn and AATD's quotations failed to comply with multiple, material RFQ requirements, and allege these deficiencies should have rendered the awardees' quotations technically unacceptable. We have reviewed the record, and agree with the agency that both awardees' quotations conformed to the solicitation's requirements. We discuss below the challenge to one material requirement as a representative example.

Both protesters contend that the Lenovo All-in-One (AiO) desktop computer quoted by AATD is noncompliant with the RFQ requirement for an AiO device because it comprises two integrated products--the Lenovo ThinkCentre Tiny-in-One (TiO) monitor and the M80q computer instead of offering a single device. Sierra Protest at 4-9; V3Gate Protest at 9. The protesters argue that an AiO device is defined as a single device made up of a monitor and computer enclosed in a single mechanical housing. See Sierra Protest at 6; V3Gate Protest at 9 (citing a definition of an AiO device from Investopedia.com). Sierra also contends that the Lenovo AiO devices are not EPEAT-certified or Energy Star registered because while the monitor and desktop each may individually meet EPEAT requirements, there is no record that the combined solution--considered an integrated desktop computer--is EPEAT certified. Sierra Comments & Supp. Protest at 4-7.

The agency counters that the proposed device fully meets the solicitation technical requirements. Sierra Memorandum of Law (MOL) at 4; V3Gate MOL at 7. The VA explains that an AiO is "a space saving computer desktop device that eliminates the need for both a monitor and a bulky computer tower." Sierra MOL at 4. The VA maintains that AATD proposed an integrated solution that combines two Lenovo items that integrate seamlessly to create a single unit. *Id.*; V3Gate MOL at 8. Moreover, nothing in the requirement mandated that the quoted device components be non-removable or in an enclosed unit; the agency contends that such requirement "would serve no practical function." Sierra MOL at 4.

With respect to the EPEAT certification, the agency argues that the proposed Lenovo device is EPEAT-certified because its two separate components are certified. Sierra MOL at 5-7. The VA avers that the protester "ignores the realities of EPEAT certifications" and maintains that contrary to Sierra's assertions, two independently certified products do not lose certification when they are integrated into one device. *Id.*

In reviewing protests challenging an agency's evaluation of quotations, we do not reevaluate quotations, but rather we examine the record to determine whether the agency's judgment was reasonable and in accordance with the stated evaluation criteria and applicable procurement laws and regulations. *Peregrine Integrated Mgmt., Inc.*, B-414788, B-414788.2, Sept. 11, 2017, 2017 CPD ¶ 286 at 2. Similarly, we will not disturb an agency's determination of the acceptability of a quotation absent a showing that the determination was unreasonable, inconsistent with the terms of the solicitation, or in violation of procurement statutes or regulation. *OPTIMUS Corp.*, B-400777,

Jan. 26, 2009, 2009 CPD ¶ 33 at 4. The adequacy of an agency's justification is ascertained through examining whether the agency's explanation is reasonable, that is, whether the explanation can withstand logical scrutiny. *Columbia Imaging, Inc.*, B-286772.2, B-287363, Apr. 13, 2001, 2001 CPD ¶ 78 at 2-3. Here, we find no reason to object to the agency's acceptability determination.

The RFQ's attachment A, providing specifications for items sought in this procurement, included minimum requirements for AiO desktops. While the solicitation did not define an AiO device, it listed specifications concerning its wireless interface, platform integrity (remote management), power supply, resolution, and smart card reader, among other items. AR, Tab 11, RFQ amend. 6, att. A, Desktops Tab. It also provided that:

Case dimensions (without stand) [shall] not . . . exceed 16"(H) X 23"(W) X 3"(D). Chassis must include 2.0MP, 1080p or better webcam and microphone. Unit depth with attached monitor stand shall not exceed 10 inches. AiO Stand shall be included in the unit price.

Id.

The record reveals that AATD's quoted device, Lenovo desktop TIO TC M80q Gen 4, with dimensions of "7.36" X 7.24" X 2.62" w/VESA mount" adapter, was well within the RFQ's dimensional limits. AR, Tab 13, AATD's Quotation, att. A, Desktops Tab. The agency also reviewed the other information provided by AATD and confirmed that the vendor complied with all the other specifications outlined in the attachment A.

The VA asserts that vendors were not "preclude[d] or restrict[ed]" from quoting "an integrated solution provided the solution fits within the monitor chassis' maximum size limitations and performs the required functions." V3Gate MOL at 8. The agency also disputes the relevance of the internet definition of an AiO device provided by V3Gate, discussed above, explaining that the definition was not included in the RFQ's attachment A, outlining the requirements for the AiO desktops. V3Gate COS ¶ 17. The agency contends that adopting that definition now would impose additional technical requirements exceeding those included in the RFQ. *Id.*

Based on this record, we conclude that the agency's determination that AATD's AiO device was compliant with the RFQ requirements was reasonable. As noted above, the device met all of the functional specifications for an AiO device outlined in the RFQ, and complied with its dimensional requirements. We also agree with the VA that the solicitation did not specifically define what type of device should qualify as an AiO; nor did the RFQ restrict vendors, in any way, from quoting an integrated device, similar to the type quoted by AATD. As such, the agency's evaluation here withstands logical scrutiny. *Columbia Imaging, Inc.*, *supra*. Accordingly, we find that the protesters have not met their burden of showing that the agency's evaluation was unreasonable.

Finally, we see no merit in the argument that AATD failed to comply with the EPEAT certification requirement. Importantly, Sierra acknowledges that each of the two

components quoted by AATD was EPEAT-certified, and does not dispute that AATD provided evidence of those certifications. In this regard, the RFQ instructed vendors to include in their quotations

evidence of product registration/qualification/designation for EPEAT . . .
for any and all proposed products certifying that the proposed product(s)
as of the date of the submission of the quot[ation] are
registered/qualified/designated as required in the form of screenshots from
the associated website.

AR, Tab 9, RFQ amend. 5 at 59. Because the solicitation references “products” as opposed to AiO “device(s)” that vendors were to quote, we find reasonable the agency’s view that this requirement permitted vendors to provide evidence of EPEAT certification compliance for each of the individual products that comprise a proposed “device.” See Sierra MOL at 6-7.

As such, we have no basis to object to the agency’s conclusion that AATD complied with the EPEAT certification requirement for its AiO device. Accordingly, this protest ground is denied.

Compliance with Prohibited Telecommunications Regulations

V3Gate contends that the VA failed to meaningfully consider whether purchasing Lenovo products from AATD complied with FAR clause 52.204-25, which prohibits agencies from contracting for certain telecommunications equipment.⁶ V3Gate Protest at 10. In this regard, V3Gate broadly argues that the Lenovo computers quoted by AATD “fall within [the] expansive definition” of covered equipment found in FAR clause 52.204-25, as equipment linked to the Chinese government. *Id.* at 11. The protester asserts that the agency was required to analyze whether issuing a delivery order to AATD complied with FAR clause 52.204-25. *Id.* at 12.

⁶ FAR clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, implements section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. No. 115-232). Specifically, section 889 (a)(1)(A) prohibits federal agencies from acquiring “any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.” The clause defines covered equipment or services as those produced or provided by Huawei Technologies Company, ZTE Corporation or other entities that the Secretary of Defense, in consultation with the intelligence community, reasonably believes are entities owned or controlled by, or otherwise otherwise connected to, the government of China. See FAR 52.204-25(a)(2), (4). The list of prohibited equipment produced or provided by entities identified by the Secretary of Defense is maintained in the System for Award Management (SAM). FAR 4.2102(d)(2).

In response, the agency asserts that it fully complied with the applicable regulatory prohibition. V3Gate MOL at 12. Specifically, the VA explains that it included the pertinent FAR clauses in the solicitation, and requested that vendors self-certify whether they provide covered telecommunications equipment in their quotations. *Id.* (citing FAR 4.2105, mandating the insertion of FAR clauses 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment; 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment; and 52.204-26, Covered Telecommunications Equipment or Services-Representation in the solicitation). The VA maintains that the contracting officer here reasonably relied on AATD's representation that it did not provide covered equipment or services. *Id.* (citing FAR 4.2103); see V3Gate AR, Tab 15, AATD Quotation, AATD Self-Certifications at 2.

Our Office has repeatedly explained that where an agency has no information prior to award that would lead to the conclusion that the vendor, or the product or service to be provided, fails to comply with the solicitation's eligibility requirements, the agency can reasonably rely upon a vendor's representation/certification of compliance. See, e.g., *Kipper Tool Co.*, B-409585.2, B-409585.3, June 19, 2014, 2014 CPD ¶ 184 at 5 (denying protest that agency could not reasonably rely on representations regarding compliance with the Trade Agreements Act); *KNAPP Logistics Automation, Inc.*, B-406303, Mar. 23, 2012, 2012 CPD ¶ 137 at 4 n.1 (same, with respect to the awardee's small business size certification); *New York Elevator Co., Inc.*, B-250992, Mar. 3, 1993, 93-1 CPD ¶ 196 at 2 (same, with respect to compliance with the Buy American Act).

Based on our review of the record, we find no basis to sustain this protest ground. At the outset, we agree with the VA that upon receiving a self-certification from AATD, representing that the company did not provide or use covered equipment, the agency could rely on the veracity of that representation. Specifically, FAR clause 52.204-26 mandates that a vendor should review the excluded entities list in the SAM, and then self-certify compliance with the prohibited telecommunications regulations. Further, FAR section 4.2103 provides that the contracting officer may rely on vendors' "does not" or "will not" "representation(s) [included in FAR clauses 52.204-24 or 52.204-26], unless the contracting officer has reason to question the representation." FAR 4.2103(a)(1)(i), (2)(i).

Here, there were no concrete indications that AATD was providing prohibited telecommunication equipment. In fact, V3Gate does not claim--nor can it--that Lenovo is subject to any exclusion listing. Rather, the protester asserts that, in light of the "well-known connection between Lenovo and the Chinese Government," the VA should have investigated the truthfulness of AATD's representation that its quoted products were not prohibited telecommunications equipment. V3Gate Comments & Supp. Protest at 11.

We see no merit to the protester's contentions. While the protester cites to a number of publications, including a 2019 Department of Defense Inspector General report and the 2015 cybersecurity alerts issued by the Department of Homeland Security, which warn

of cyberespionage risks associated with Lenovo products, there is no evidence that the contracting officer was aware of these sources or should have been. Accordingly, we do not find that this information gave rise to an obligation to investigate AATD's FAR clauses 52.204-24 and 52.204-26 representations.

Nor do we agree with V3Gate's allegation that the contracting officer was required to investigate "whether or not the Secretary of Defense . . . belie[ves that Lenovo was connected to the government of China, by] contacting the [Department of Defense] or reviewing other published lists of such published entities." V3Gate Comments & Supp. Protest at 12; see *also* Protest at 12. We find no such a requirement in the existing regulations. This protest ground is denied.⁷

Improper Exchanges and Amendment to RFQ

Finally, the protesters challenge the VA's additional exchange with AATD, and subsequent issuance of amendment 6 to the RFQ, as improperly benefiting AATD and its Lenovo products. Sierra Comments & Supp. Protest at 18-19; V3Gate Protest at 14-17. In this regard, after issuing a clarification request to AATD, asking the vendor to clarify its compliance with the RFQ requirement for matching dual wireless antennas, the agency concluded that the solicitation's wireless antennas requirement was overly restrictive. COS ¶ 8. The VA therefore amended the solicitation to permit dual wireless antennas to be either internal or external, as long as dual antennas were supported. AR, Tab 11, RFQ amend. 6 at 2.

The protesters allege that upon discovering that AATD's quotation failed to comply with the matching dual wireless antennas requirement, the VA should have rejected its quotation, instead of asking AATD to clarify its compliance. *Id.* Sierra also contends that the agency's exchanges with vendors were, in fact, discussions, which were conducted unequally, as the VA failed to advise Sierra that its quotation was "nonconforming" or that its price was excessive. Sierra Comments & Supp. Protest at 13.

⁷ As a related protest ground, V3Gate challenges the agency's responsibility determination for AATD, alleging that the same security considerations that make Lenovo products non-compliant under FAR clause 52.204-25 should have led the VA to find AATD non-responsible under FAR subpart 9.1. V3Gate Protest at 12-14.

Our Office generally will not consider a protest challenging an agency's affirmative determination of an offeror's responsibility, absent "specific evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible." 4 C.F.R. § 21.5(c); see *IBM Corp.*, B-415798.2, Feb. 14, 2019, 2019 CPD ¶ 82 at 11. We generally limit the scope of this exception to only "very serious matters, for example, potential criminal activity or massive public scandal." *IBM Corp.*, *supra*. Because, as discussed above, V3Gate's allegations do not rise to that level, we find no merit to this protest ground.

The agency responds that the exchange with AATD was fair and equal, and the exchange “merely clarified” that the VA’s requirement was overly restrictive. V3Gate MOL at 19-20. The VA maintains that the subsequent RFQ amendment was proper and intended to increase competition as well as reflect the agency’s actual needs. V3Gate MOL at 16-20. Finally, the agency avers that Sierra’s allegations of unequal discussions, made in its supplemental protest, are untimely, as the protester learned of the additional exchange with AATD at its debriefing but elected not to challenge this issue within 10 days, as required by our Bid Protest Regulations. Sierra Supp. MOL at 2 (*citing* AR, Tab 22, Debriefing Documents, SSD Price Reasonableness at 6).

Our regulations contain strict rules for the timely submission of protests. Under these rules, a protest, other than one based on alleged improprieties in a solicitation, must be filed not later than 10 calendar days after the protester knew, or should have known, of the basis for the protest. 4 C.F.R. § 21.2(a)(2). Here, Sierra first learned of the agency’s additional August 19 exchange with AATD via its debriefing, on September 22. See Sierra AR, Tab 22, Debriefing Documents, SSD Price Reasonableness at 6. Accordingly, the protester was required to raise its unequal discussions argument, with specificity, within 10 calendar days of the debriefing date.⁸ See 4 C.F.R. § 21.2(a)(1). Our regulations do not contemplate the piecemeal presentation or development of protest issues. *Epsilon Sys. Sols., Inc.*, B-409720, B-409720.2, July 21, 2014, 2014 CPD ¶ 230 at 11. Because Sierra did not raise these new arguments until it submitted its comments on November 7, we consider them untimely and not for consideration.

With regards to V3Gate’s challenge to the exchange with AATD, the protester claims that the VA was obligated to reject AATD’s nonconforming quotation instead of engaging in additional clarification regarding its matching dual wireless antennas requirement. V3Gate Protest at 14-16. V3Gate then argues that the solicitation amendment that followed amounted to an improper relaxation of solicitation requirements, unfairly benefiting AATD. V3Gate Protest at 14-17 (*citing Pride Int’l, LLC v. United States*, 64 Fed. Cl. 754, 757 (2005), for the proposition that “a contracting officer may not amend or clarify the terms of a solicitation . . . solely for the benefit of a single bidder.”).

We first note that the protester relies on authorities that are inapposite here. See V3Gate Protest at 17 (*citing Pride Int’l, LLC v. United States*, 64 Fed. Cl. at 757). Notwithstanding the fact that our Office is not bound by the decisions of the United States Court of Federal Claims, the case cited by the protester is clearly distinguishable from the current circumstances. In *Pride Int’l*, the court ruled that it was improper for the plaintiff to rely on an oral statement by the contracting officer that had the effect of amending the solicitation’s requirements because “a contracting officer may not amend

⁸ Although not dispositive on the question of timeliness, we note that V3Gate received an identical SSD document during its debriefing and challenged the agency’s exchange with AATD as part of its initial protest. V3Gate Protest, exh. D, Debriefing Documents, SSD Price Reasonableness at 53; *id.* at 14-17.

or clarify the terms of a solicitation *ex parte*, or solely for the benefit of a single bidder.” *Pride Int’l, LLC v. United States*, 64 Fed. Cl. at 757. Ultimately, that case was dismissed for lack of standing. Here, there was a written amendment to the solicitation, distributed to all vendors, which provided each vendor an opportunity to submit revised quotations.

Further, we agree with the agency that its exchanges with vendors, in this FAR subpart 16.5 procurement, were fair and not misleading. V3Gate MOL at 19. Consistent with the RFQ scheme, the agency was evaluating only the technical quotations of the two lowest-priced vendors, including AATD. RFQ at 57. As the VA notes, the exchange with AATD did not result in AATD revising its quotation, rather AATD merely clarified to the agency that the antenna requirement was overly restrictive, which the agency decided to address via an amendment. V3Gate MOL at 20.

Regarding the VA’s decision to amend the solicitation, we find nothing improper with the agency’s actions. As a general matter, agencies are not prohibited from amending a solicitation after the closing date, or extending the closing date, in the interest of obtaining competition. See, e.g., *Geo-Seis Helicopters, Inc.*, B-299175, B-299175.2, March 5, 2007, 2007 CPD ¶ 135 at 5; see also *Ivey Mech. Co.*, B-272764, Aug. 23, 1996, 96-2 CPD ¶ 83 at 1-2. Here, the record shows that the agency’s motivation in amending the solicitation and extending the deadline was to remove an overly restrictive requirement, allow vendors to revise and resubmit their updated quotations, and thus, enhance competition. V3Gate COS ¶¶ 8-9. The agency further explains that “the clear pattern of [RFQ] amendments demonstrates [the] VA’s intent to make the requirements as competitive as possible while still meeting its needs.” V3Gate MOL at 17. We agree with the agency that its amendment to remove the requirement for matching dual antennas was reasonable, and could potentially enhance competition.⁹ Accordingly, we disagree with the protester’s contentions that the solicitation amendment improperly

⁹ This conclusion is consistent with our Office’s general practice of not considering contentions that RFQ’s specifications should be made more restrictive. See *DNC Parks & Resort at Yosemite, Inc.*, B-410998, Apr. 14, 2015, 2015 CPD ¶ 127 at 13. In this regard, our role in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to protect any interest a protester may have in limiting competition through more restrictive specifications. *Platinum Services, Inc.; WIT Assocs., Inc.*, B-409288.3 *et al.*, Aug. 21, 2014, 2014 CPD ¶ 261 at 5.

benefited AATD, and find no basis for sustaining this protest ground.¹⁰

The protests are denied.

Edda Emmanuelli Perez
General Counsel

¹⁰ To the extent V3Gate asserts that the issuance of amendment 6 was otherwise improper, it was required to raise this challenge before the closing time for the receipt of quotations. See 4 C.F.R. § 21.2(a)(1); *Allied Tech. Group, Inc.*, B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 9 n.10. Protests of alleged apparent solicitation improprieties must be filed prior to the solicitation's deadline. Because the protester failed to challenge that issue at the time, we now consider it untimely.