



Decision

Matter of: Colonial Federal Healthcare, LLC

File: B-421977; B-421977.2

Date: November 14, 2023

Randy Kamenetsky, for the protester.

Daniel J. McFeely, Esq., Department of Veterans Affairs, for the agency.

Todd C. Culliton, Esq., and Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Initial protest allegations are dismissed where the protester failed to file comments within 10 days of receiving the agency report; and supplemental allegations are dismissed as untimely and not within the jurisdiction of our Office.

DECISION

Colonial Federal Healthcare, LLC, of Chantilly, Virginia, protests the award of a contract to DeployAHP, LLC, of Culver City, California, under request for proposals (RFP) No. 36C26223R0020, issued by the Department of Veterans Affairs (VA) for nurse staffing services. The protester argues that the agency unreasonably evaluated proposals and improperly made the selection decision.

We dismiss the protest.

BACKGROUND

On February 10, 2022, the VA issued the RFP to procure nurse staffing services, and restricted competition to service-disabled veteran-owned small businesses (SDVOSB). Agency Report (AR), Tab 2, RFP at 2, 11. The RFP contemplated the award of multiple fixed-price indefinite-delivery, indefinite-quantity contracts to be performed over a 1-year base period and four 1-year option periods. *Id.* at 5-11, 58, 62. Award would be made on a best-value tradeoff basis considering experience and price factors. *Id.* at 58. Experience would be considered more important than proposed prices. *Id.*

Thirty-three proposals were submitted prior to the March 3, 2023, deadline for their submission. The agency determined that BTL Technologies, Inc., DeployAHP, LLC,

and EGA Associates, LLC, offered the best values, and awarded contracts to those three firms. AR, Tab 5, Source Selection Decision Memorandum (SSDM) at 21.

When evaluating Colonial's proposal, the agency assigned a "satisfactory" adjectival rating to the firm's experience. AR, Tab 5, SSDM at 10. The agency noted the firm's proposal did not demonstrate that it had experience providing comparable nurse staffing for two identified subspecialties. *Id.*

On September 8, 2023, the agency notified Colonial that its proposal was unsuccessful. AR, Tab 7, Notice of Unsuccessful Offeror at 3. Later that day, Colonial requested its debriefing. *Id.* at 4. On September 12, the agency provided Colonial with its written debriefing, disclosing the evaluation results and the rationale for the award. *Id.* at 9.

On September 13, Colonial requested further explanation as to why its proposal was not selected when compared with Deploy AHP's proposal. AR, Tab 7, Notice of Unsuccessful Offeror at 11. Later that day, the agency responded that a proposal evaluated as having "good" experience demonstrated better strength of experience providing nursing services and was evaluated as superior to any proposal evaluated as having "satisfactory" experience. *Id.* at 16.

On September 17, Colonial filed an initial protest with our Office challenging the agency's award to DeployAHP. The protester raised multiple allegations, principally arguing that the agency unreasonably evaluated its proposal, improperly selected DeployAHP for award, and erroneously determined that DeployAHP was a responsible contractor.

Thereafter, on October 17, the protester filed a supplemental protest, arguing that DeployAHP is not an eligible SDVOSB because that firm functions as a "pass-through entity" for another company.

On October 18, the VA filed its report responding to the initial protest.

Thereafter, on October 24, the agency requested dismissal of the supplemental protest as untimely and outside our jurisdiction (as to the latter point, the agency argued that the issue is a matter for the Small Business Administration (SBA), not our Office). On October 25, Colonial Federal Healthcare filed a response to the agency's request for dismissal of the supplemental protest, arguing that it was timely and within our jurisdiction.

On October 31 (more than 10 days after the agency report had been submitted), the VA requested dismissal of the initial protest, arguing that the protester failed to file comments in response to the agency report. That same day, the protester made a submission responding to the agency's request for dismissal of the initial protest, arguing that, in fact, it had filed its comments. The protester directed our attention to its October 25 submission responding to the agency's request to dismiss the supplemental protest.

DISCUSSION

After reviewing the record, we dismiss both the initial and supplemental protests. We discuss each below.

Initial Protest

As noted, the protester raised multiple allegations in its initial September 17, protest. Principally, the protester argued that the agency unreasonably evaluated its experience and unreasonably selected DeployAHP for award. The protester also argued that DeployAHP lacks the capacity to manage this contract--in effect, that DeployAHP was not responsible.

The agency provided a substantive response to all the initial protest allegations in its October 18 agency report. The protester did not respond substantively to the agency's positions in any subsequent filing.

Our regulations provide that the protester must file comments within 10 days after the agency has filed its report, except where our Office has granted an extension of time or establishes a shorter period of time for filing comments. 4 C.F.R. § 21.3(i)(1).

Here, the agency filed its report on October 18, and the protester was required, pursuant to 4 C.F.R. § 21.3(i)(1), to file comments responding to the agency report by October 30. Despite that requirement, Colonial never filed any comments. While the protester argues that its October 25, response to the agency's request to dismiss the supplemental protest constituted its comments, we are unpersuaded. Nowhere in that filing did the protester offer any substantive response to the agency's position regarding the merits of the initial protest. Instead, the protester offered only counterargument to the agency's request to dismiss the supplemental protest. Accordingly, we dismiss the initial protest allegations.

Supplemental Protest

Colonial filed its supplemental protest on October 17. In that filing, the protester argued that it had "uncovered substantial evidence" showing that DeployAHP functions as a "pass-through entity" for another company. Colonial argued that DeployAHP was established by the proprietor of another company, and simply used another individual's qualifications to participate in competitions restricted to SDVOSB firms. In support of its allegations, the protester cited publicly available information showing that DeployAHP and the other company use the same telephone number and addresses. The protester also submitted website screenshots showing that DeployAHP's owner has an unrelated profession.

The agency requested dismissal of the supplemental protest as untimely and as outside our jurisdiction. Colonial argues that the allegations are timely because they were filed

within 10 days of when the protester completed its investigation into DeployAHP's eligibility, and that our Office has jurisdiction because the challenge concerns the award of a federal contract.

After reviewing the supplemental allegations, we agree with the agency that they are both untimely and outside our Office's jurisdiction.

Regarding timeliness, our regulations provide that a protest must be filed not later than 10 days after the protester knows or should have known the basis for its protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2); *accord. Kolb Grading, LLC*, B-420310.2, Dec. 8, 2021, 2022 CPD ¶ 6 at 2. Protesters have an affirmative obligation to diligently pursue information that forms the basis for their protest and must do so in a reasonably expedient manner, considering the circumstances of the case. *General Physics Federal Systems, Inc.*, B-274795, Jan. 6, 1997, 97-1 CPD ¶ 8 at 2.

Here, Colonial failed to diligently pursue the information forming the basis of its protest, and therefore filed more than 10 days after it should have known the basis for the supplemental allegations. As noted, Colonial cites only publicly-available information that it claims is evidence showing that DeployAHP is not an eligible SDVOSB. This information should have been reviewed shortly after Colonial became aware that DeployAHP was selected as an awardee, and the allegation should have been raised with our Office within 10 days of the close of its September 12, debriefing. *Cf. General Physics Federal Sys., Inc., supra*, (protest allegations dismissed as untimely when protester failed to diligently pursue information that was publicly available). Colonial also has not explained why the information was not immediately available or could not have been discovered sooner. Accordingly, we conclude that Colonial's supplemental protest is untimely.

We also agree with the agency that our Office does not have jurisdiction to review any challenge to DeployAHP's SDVOSB eligibility. The Small Business Act, 15 U.S.C. § 637(b)(6), gives the SBA, not our Office, conclusive authority to determine matters of small business size status for federal procurements. *See also* 4 C.F.R. § 21.5(b)(1). Similarly, the SBA is the designated authority for determining whether a firm is an eligible SDVOSB concern, and there are established procedures for interested parties to challenge a firm's status as a qualified SDVOSB concern. 15 U.S.C. §§ 632(q), 657(b); 13 C.F.R. pt. 128. Consequently, our Office will neither make nor review SDVOSB status determinations. *OBXtek, Inc.*, B-415258, Dec. 12, 2017, 2017 CPD ¶ 381 at 5; *accord Hurricane Consulting, Inc.*, B-404619 *et al.*, Mar. 17, 2011, 2011 CPD ¶ 70 at 5-6.

Here, the protester argues that DeployAHP is not an eligible SDVOSB because it is a "pass-through entity" for a larger, non-veteran-owned company. This allegation amounts to a size status challenge because the protester effectively complains that

DeployAHP materially misrepresented its eligibility as an SDVOSB. See *OBXtek, Inc., supra* (dismissing allegation that an offeror materially misrepresented its SDVOSB eligibility because our Office lacks jurisdiction to review a size status challenge). Thus, we also conclude that our Office does not have jurisdiction to consider the matter.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel