



Decision

Matter of: Major Contracting Services, Inc.

File: B-423191

Date: March 4, 2025

Steven Wald for the protester.

Major Katharine M. Calderon, Department of the Army, for the agency.

Raymond Richards, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest grounds alleging bias, procedural errors, and improper disclosure of information are dismissed where the protester's allegations are based on speculation and are legally and factually insufficient to establish valid bases of protest.
 2. Protest challenging the contracting officer's affirmative determination of responsibility is dismissed where the allegation does not meet the exceptions to trigger a review under our Bid Protest Regulations.
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DECISION

Major Contracting Services, Inc. (Major), a small business of Colorado Springs, Colorado, protests the award of a contract to K&H Environmental Services (K&H), a small business of East Dublin, Georgia, under request for proposals (RFP) No. W9124M24R0016, issued by the Department of the Army for portable chemical latrines (PCL) and hand washing stations (HWS) at Fort Stewart and Hunter Army Airfield, Georgia. The protester challenges the agency's decision to award the contract to K&H.¹

We dismiss the protest.

¹ The protester elected to file and pursue its protest on its own behalf without the assistance of legal counsel, therefore no protective order was issued in this matter. In certain areas, our discussion is general in nature to avoid reference to non-public information.

BACKGROUND

The Army issued the RFP on June 26, 2024, as a small business set-aside under the commercial products and commercial services procedures of Federal Acquisition Regulation (FAR) part 12. Agency Report (AR), Tab 5, Conformed RFP at 1, 153. The Army sought proposals for all personnel, equipment, material, supplies, facilities, transportation, tools, supervision, and other items and non-personal services necessary to provide PCLs and HWSs at Fort Stewart and Hunter Army Airfield. *Id.* at 114. The solicitation contemplated the award of an indefinite-delivery, indefinite-quantity contract where fixed-price task orders would be issued under the resulting contract. *Id.* at 6-55, 102. Award would be made on a lowest-price, technically acceptable basis considering three factors: technical; past performance; and price. *Id.* at 153.

Under the past performance factor, proposals would be rated on an acceptable or unacceptable basis. *Id.* at 154. The acceptability rating would consider the recency and relevancy of offerors' past performance. *Id.* at 154-155. The solicitation stated that offerors previously "terminated for cause or default on any Government contract or any private sector contract for unsatisfactory performance within the last three years shall receive an Unacceptable rating." *Id.* at 155. Proposals were due by July 31.² *Id.* at 1.

The Army received multiple proposals by the due date, including proposals from Major and K&H. Contracting Officer's Statement (COS) at 3. In short, K&H's proposal was found to be the lowest-priced, technically acceptable proposal.³ AR, Tab 11, Source Selection Decision Document (SSDD) at 5, 8-9; COS at 8.

On September 30, Major received an apparent unsuccessful offeror notice. AR, Tab 12, Email from Army to Major; AR, Tab 13, Apparent Unsuccessful Offeror Notice. In accordance with FAR section 15.503(a)(2), Major was informed that it was not the apparent successful offeror, K&H was the apparent successful offeror, the government would not consider subsequent proposal revisions, and that no response was required unless a basis existed to challenge the size status or small business status of the apparent successful offeror. AR, Tab 13, Apparent Unsuccessful Offeror Notice.

On October 3, Major filed an agency-level protest. AR, Tab 15, Agency-Level Protest at 1. Major argued that K&H improperly claimed to be an economically disadvantaged

² On July 15, Major filed an agency-level protest challenging the agency's decision to issue the solicitation as a small business set-aside rather than a service-disabled veteran-owned small business (SDVOSB) set-aside. Protest, exh. 3, Agency-Level Protest at 5 (citations are to the Adobe PDF page numbers). The Army denied the protest on August 21. *Id.* at 1.

³ The record does not include the evaluation results for Major's proposal. However, the protester claims that its proposal was found technically acceptable, and the agency has not countered this claim or argued that Major is not an interested party on the basis of submitting a technically unacceptable proposal.

woman-owned small business (EDWOSB), challenged K&H's small business status generally, and challenged the agency's evaluation of K&H's proposal under the past performance factor. *Id.* at 1-4. Regarding the past performance challenge, Major argued that K&H was actually another company, A-OK Portable Services (A-OK) of Macon, Georgia, which previously held a government contract for PCL services at Fort Stewart that was terminated by the government for cause, and that K&H improperly failed to disclose the termination. *Id.* at 3-4. Major also argued that K&H could not demonstrate that their past performance was of sufficient size and scope to meet the requirements of the instant solicitation. *Id.*

On November 13, the Army denied the agency-level protest. AR, Tab 19, Agency-Level Protest Decision at 2. First, the agency noted that the matters involving K&H's size and status had been referred to the Small Business Administration (SBA) and that the SBA determined K&H was a small business concern under the applicable size standard.⁴ *Id.* at 1; *see also* AR, Tab 17, SBA Size Determination at 8. Second, the agency addressed Major's challenge to the past performance evaluation and concluded that the evaluation was conducted reasonably and in accordance with the terms of the solicitation and applicable regulations. AR, Tab 19, Agency-Level Protest Decision at 1-2. Third, the agency recognized a relationship between K&H and A-OK, and that A-OK had been terminated from a contract in 2019. *Id.* at 1. The agency explained that since the termination occurred in 2019, it was not relevant to the evaluation of K&H's proposal under the past performance factor because the solicitation was concerned with terminations occurring within the last three years (from 2024) and A-OK's termination fell outside of that window. *Id.* Finally, the agency noted that A-OK's termination had been "noted as part of [the] broader responsibility determination process." *Id.* at 2.

Following the denial of Major's agency-level protest, the contracting officer proceeded to make an award decision. On November 19, the contracting officer "conducted another determination of responsibility pertaining to K&H to ensure there were no changes from the initial [responsibility] determination[.]" COS at 8. That same day, the contracting officer determined that K&H was a responsible contractor, signed the affirmative determination of responsibility, and awarded the contract to K&H. AR, Tab 10, Responsibility Determination at 4; AR, Tab 11, SSDD at 9 (digital signature block).⁵

⁴ The contracting officer states that the SBA's determination did not address Major's allegation regarding K&H's alleged improper categorization as an EDWOSB. COS at 5. The contracting officer opines that the allegation would have no bearing on the instant procurement because the solicitation was issued as a small business set-aside, not an EDWOSB set-aside, and K&H was found to be a small business concern under the appropriate size standard. *Id.* The SBA later addressed the issue by email and stated that "[K&H's] status as an EDWOSB has no bearing on the [small business set-aside] award." Protest, exh. 4, Agency-level Protest at 21 (email from SBA to Major).

⁵ The SSDD contains two dates on the signature line: September 6 and November 19. AR, Tab 11, SSDD at 9. The contracting officer explains that the document is dated September 6 because the procurement is a small business set-aside and September 6

(continued...)

Also on November 19, Major was provided with an unsuccessful offeror letter. COS at 8. On November 25, Major filed the instant protest with our office.⁶

DISCUSSION

Major protests the Army's handling of the instant procurement and its decision to award the contract to K&H. The Army argues that Major's protest fails to state a legally sufficient basis of protest or otherwise raises issues not for GAO's consideration and should be dismissed. As discussed below, we dismiss the protest in its entirety.

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(c)(4) and (f); *Magellan Fed.*, B-422273, Feb. 21, 2024, 2024 CPD ¶ 56 at 5. Where a protester relies on bare assertions, without further supporting details or evidence, our Office will find that the protest ground amounts to no more than speculation and does not meet the standard contemplated by our regulations for a legally sufficient protest. *Chags Health Info. Tech., LLC*, B-420940.3 *et al.*, Dec. 14, 2022, 2022 CPD ¶ 315 at 5-6. A protester has the burden of presenting sufficient evidence to establish its position. *GovernmentCIO, LLC*, B-418363 *et al.*, Mar. 10, 2020, 2020 CPD ¶ 102 at 11. A protester's unsupported allegations do not meet that burden, and our Office will not conduct an investigation to establish the validity of a protester's speculative statements. *Id.*

Allegation of Bias

Major alleges that United States Army Mission and Installation Contracting Command-Fort Stewart (MICC-FS) was biased against Major and that this alleged bias somehow affected the instant procurement. Protest at 1-2. To support this allegation, Major points to a 2022 memorandum issued by MICC-FS informing Major that the Army would not exercise any remaining option periods on a contract.⁷ *Id.* at 1-2; see Protest, exh. 1, Stop Work Order at 2 (explaining that due to funding issues, MICC-FS could not issue any more task orders under the relevant contract). Major asserts that MICC-FS "willfully mis-represented the financial situation and threatened [Major] with termination in order

is the date that K&H was determined to be the apparent successful offeror. COS at 3. The contracting officer signed the SSDD on November 19 after finalizing the award decision. *Id.* at 8.

⁶ The protest was filed in the Electronic Protest Docketing System (EPDS or Dkt.) at 7:02 p.m., Eastern Time, on Friday, November 22. Dkt. No. 1. Accordingly, we consider the protest to have been filed on November 25. 4 C.F.R. §§ 21.0(d) (defining days), (g) (a document is filed on a particular day when it is filed in EPDS by 5:30 p.m., Eastern).

⁷ As another example of allegedly biased behavior, Major details an incident where MICC-FS decided to exercise a 6-month option to extend services rather than exercising an option year on Major's contract. Protest at 2.

to scare/coerce [Major] into accepting a 10-month purchase order, and to fraudulently trick [Major] into accepting termination.” Protest at 2.

The Army asks our Office to dismiss this challenge, arguing that Major fails to state a legally sufficient basis of protest. Req. for Dismissal at 1. The Army contends that Major is merely voicing a general complaint about past events and has failed to include any specific facts demonstrating bias in the instant procurement. *Id.* at 6. The Army also notes that contracting officials are presumed to act in good faith and protesters seeking to establish that a contracting official was motivated by bad faith or bias are required to provide convincing proof, which Major fails to do. *Id.* at 7.

Here, we agree with the Army that Major has failed to state a legally sufficient basis of protest. The allegation of bias is a bare assertion unsupported by facts relevant to the instant procurement. While Major provides a history of prior procurement actions and speculates as to whether the Army’s financial situation from the prior procurement was misrepresented or that the Army’s actions were motivated by bad faith, Major provides our Office with no factual evidence to support these claims. We decline to investigate such speculative statements on behalf of the protester.

Also, as noted by the Army, government officials are presumed to act in good faith, and a protester’s claim that contracting officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. *Azimuth, Inc.*, B-409711, B-409711.2, July 21, 2014, 2014 CPD ¶ 218 at 4. Simply put, Major’s protest ground lacks any proof, and therefore does not contain the kind of convincing proof required to attribute unfair or prejudicial motives to MICC-FS contracting personnel. Accordingly, this protest ground is dismissed. 4 C.F.R. §§ 21.1(c)(4) and (f); *id.* §21.5(f).

Allegation of Procedural Deficiencies

The protester complains that the procurement suffered from “procedural deficiencies[.]” Protest at 1. While Major does not specifically state what these procedural issues were or why they represented deficiencies, Major provides a general overview of the procurement to include its request for an SDVOSB set-aside, the agency’s explanation that the procurement would be a small business set-aside based on market research, Major’s agency-level protest challenging the terms of the solicitation and asking for an SDVOSB set-aside, and the agency’s decision to move forward with receipt of proposals before responding to the agency-level protest. *Id.* at 2-3; *see also* Resp. to Req. for Dismissal at 8 (suggesting that the alleged deficiency related to the agency’s handling of Major’s first agency-level protest).

In response, the Army argues that this protest ground is simply a rehashing of Major’s first agency-level protest which fails to present a legally sufficient basis of protest. Req. for Dismissal at 8. The Army also argues that to the extent Major is re-raising its challenge to the terms of the solicitation, the challenge is now untimely under 4 C.F.R.

section 21.2(a)(3), as Major's GAO protest was filed more than 10 days after initial adverse agency action on the agency-level protest. *Id.* at 8-9.

Here again, we find that Major has failed to state a legally sufficient basis of protest. In this regard, Major does not articulate a violation of procurement law or regulation. Rather, Major provides a recital of the procurement's history and generally complains that the agency did not answer its agency-level protest prior to moving forward with receipt of proposals. See Resp. to Req. for Dismissal at 8. There is nothing inherently wrong with an agency moving forward with receipt of proposals during the pendency of an agency-level protest challenging the terms of the solicitation. See e.g., *Briar Meads Capital-BMC15-Westwood of Lisle, LLC*, B-420800, B-420800.2, Sept. 7, 2022, 2022 CPD ¶ 235 at 7-8 (moving forward with receipt of proposals rather than answering an agency-level protest constitutes "initial adverse agency action"). Accordingly, we find that the allegation fails to state a valid basis of protest and is dismissed.⁸ 4 C.F.R. §§ 21.1(c)(4) and (f); *id.* § 21.5(f).

Allegation of Improper Disclosure of Information

Major argues that the awardee, K&H, was provided information "outside of the proper channels about when the contract would be awarded" and that K&H may have been given "other confidential/proprietary information[.]" Protest at 5. For example, Major states that on November 15 (four days before the award decision was finalized), the owner of K&H contacted a Major employee and discussed with the employee information about the contract award. *Id.* at 4. Major also claims that "[K&H] had knowledge of specific orders and [Major's] execution/cancellation of those orders." *Id.* at 5. Major then hypothesizes that the Army may have provided K&H with Major's proprietary information. *Id.* ("If [K&H] had access to [information about contract award dates and Major's prior work], what other proprietary information did [they] have (pricing)?").

In response, the Army argues that Major's allegation is absent any relevant facts and fails to state a valid basis of protest. Req. for Dismissal at 10-12. In this regard, the Army argues that nothing in Major's protest ground establishes a prejudicial violation of procurement law or regulation. *Id.* at 11. Further, the Army argues that even assuming MICC-FS did disclose information to K&H about an award decision or about Major's past work history (which it does not concede), Major fails to explain how such disclosure tainted the instant procurement or otherwise prejudiced Major. *Id.* at 11-12.

Here again, we conclude that Major has failed to state a legally sufficient basis of protest. As an initial point, Major's suggestion that the Army may have given K&H Major's pricing information is merely an invitation for GAO to engage in speculation which we decline to do. Moreover, based on our understanding of the protest, Major's issue appears to be with K&H allegedly having knowledge of the agency's award

⁸ To the extent these facts raise timeliness concerns, we need not address timeliness here because we dismiss the challenge for failing to state a valid basis of protest.

decision before the award was finalized and knowledge of Major's prior work on government contracts. This fails to state a valid basis of protest. Even if K&H was given this information by the agency, the protester fails to explain how these alleged facts demonstrate a prejudicial violation of procurement law or regulation.⁹ Accordingly, the protest ground is dismissed. 4 C.F.R. §§ 21.1(c)(4) and (f); *id.* § 21.5(f).

Challenge to Affirmative Determination of Responsibility

Major challenges the affirmative determination of responsibility, essentially arguing the agency should have found K&H nonresponsible. Protest at 3-5; Comments at 3-15. In raising this challenge, Major makes a variety of allegations which it claims identify evidence raising serious concerns that, in reaching the affirmative responsibility determination, the contracting officer unreasonably failed to consider. For example, Major claims that K&H misrepresented its status as an EDWOSB,¹⁰ K&H previously failed to perform a contract with the same requirements as the instant procurement, K&H is actually a rebrand of A-OK and that A-OK's 2019 termination should have been considered, and that a K&H owner initiated improper communications with a Major employee prior to contract award. Protest at 3-5.

Prior to filing the agency report, the Army asked our Office to dismiss this protest ground as an issue outside of GAO's consideration under 4 C.F.R. section 21.5(c) and because any responsibility-type issues under this procurement (which is set aside for small businesses) should be filed with the SBA and not with GAO. Req. for Dismissal at 12-13. After considering the Army's dismissal request and Major's response, GAO requested an agency report on this issue. GAO Req. for Agency Report. In short, based on the record and pleadings at that juncture, we were unconvinced that dismissal was appropriate. However, as we now have the benefit of a developed record and more detailed briefing, we find that Major has failed to state a valid basis of protest.

Our Office will generally not review an affirmative determination of responsibility by the contracting officer. 4 C.F.R. § 21.5(c). One of the circumstances in which we will make an exception to this rule is where a protest identifies evidence raising serious concerns that, in reaching the responsibility determination, the contracting officer unreasonably

⁹ As an additional note, on October 2, K&H was informed that it was the apparent successful offeror. COS at 4. Thus, it is not unexpected that K&H would operate under the assumption that it would become the awardee. We further note that information on federal government contracts is publicly available

¹⁰ We note that Major contradicts itself on this point. In its protest, it states "[t]he SBA determined that K&H is not economically disadvantaged and advised them to change their representations." Protest at 3. However, Major's comments state that "The SBA did not make a determination regarding the Economically Disadvantaged status that K&H [] is claiming. They did advise [] K&H to review their certifications and update them appropriately." Comments at 13. Aside from the contradictory nature of this allegation, we find it lacks any factual support and therefore dismiss it as failing to state a valid basis of protest. 4 C.F.R. §§ 21.1(c)(4) and (f); *id.* § 21.5(f).

failed to consider available relevant information or otherwise violated statute or regulation. *Id.* The exception was intended to encompass protests raising supported allegations that the contracting officer ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. *Great Lakes Dredge & Dock Co., LLC*, B-416073, May 24, 2018, 2018 CDP ¶ 194 at 7.

The allegations that our Office have reviewed in the context of an affirmative determination of responsibility generally pertain to very serious matters such as potential criminal activity. *Marine Terminals Corp.--East, Inc.*, B-410698.9, Aug. 4, 2016, 2016 CPD ¶ 212 at 12 (fraud, criminal convictions, and improper reporting of earnings as examples of serious matters); *MVM, Inc.*, B-421788.3, B-421788.4, Mar. 5, 2024, 2024 CPD ¶ 63 at 9 (allegation included a False Claims Act violation); *Southwestern Bell Tel. Co.*, B-292476, Oct. 1, 2003, 2003 CPD ¶ 177 at 8-9 (allegation included Securities and Exchange Commission charges). Allegations related to poor prior performance are not the kind of allegations our Office will consider under this exception. See, e.g., *W.W. Grainger, Inc.*, B-420045, B-420045.2, Nov. 4, 2021, 2021 CPD ¶ 358 at 7-8 (evidence of a prior termination for cause, amongst other performance issues, did not rise to the level of seriousness contemplated by our regulations); *PDS Consultants, Inc.*, B-419300, Dec. 16, 2020, 2021 CPD ¶ 137 at 5 (dismissing challenge where “the protester’s assertions regarding the awardee’s prior performance are not sufficient, without more, to rise to the level needed to trigger a review by our Office”).

Here, we find that Major’s protest ground implicates issues not for consideration by our Office and that Major has not identified any evidence raising serious concerns that, in reaching the responsibility determination, the contracting officer unreasonably failed to consider. As this protest ground does not meet any exception to our regulation that would allow for a review of the contracting officer’s affirmative determination of responsibility, it is dismissed. 4 C.F.R. § 21.5(c); *PDS Consultants, Inc.*, *supra*.

The protest is dismissed

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General Counsel