



Decision

Matter of: Scott Investigations and Research, LLC

File: B-423342

Date: May 27, 2025

Nancy Scott, Scott Investigations and Research, LLC, for the protester.
Kari Scheck, Esq., and Cathleen Choromanski, Esq., Defense Logistics Agency, for the agency.
Mary G. Curcio, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that solicitation is restrictive of competition filed after the closing date for the receipt of proposals is dismissed as untimely.
 2. Discussions with protester were meaningful where agency notified protester of the areas in its proposal that failed to comply with the solicitation, established a common cut-off date for revised proposals, and indicated that no further opportunity to submit revisions would be provided.
 3. Agency is not required to reopen discussions to permit offeror to address deficiency first introduced in its final proposal revision.
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DECISION

Scott Investigations & Research, LLC, of Omaha, Nebraska, protests the rejection of its proposal submitted in response to request for proposals (RFP) No. SPE3S1-24-R-0011, issued by the Department of Defense, Defense Logistics Agency (DLA), for water drinking pouches. Scott asserts that the solicitation was unnecessarily restrictive, and that the agency failed to provide it with meaningful discussions.

We deny the protest.

BACKGROUND

The agency issued the solicitation for emergency water pouches on September 13, 2024, as a small business set-aside. Agency Report (AR), Tab 1, RFP at 1. On

October 22, the agency issued amendment 4 to the solicitation, which changed the solicitation from a small business set-aside, to allow for full and open competition. AR, Tab 5, RFP, amend. 4. The closing date for the receipt of proposals was extended to November 12. *Id.*

The solicitation provided for the award of an indefinite-delivery, indefinite-quantity contract to the offeror that submitted the lowest-priced, technically acceptable proposal. With respect to the technical evaluation, offerors were required to submit a product demonstration model (PDM). AR, Tab 2, RFP, amend. 1 at 11. *Id.* The PDMs were to be evaluated based on organoleptic qualities such as taste, color, texture, appearance, and overall quality as well as compliance with specifications, including a requirement for a center spout on the water pouch and sterilization requirements. *Id.* at 11, 13. Offerors were also required to submit a business proposal for evaluation with a food defense plan, an integrated pest program, and a quality system plan. *Id.* at 11-12. For price, offerors were required to provide prices for five tiers, each representing a 1-year period of performance. RFP at 5.

Eight offerors, including Scott, submitted proposals in response to the solicitation. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 5. Scott submitted a business proposal, but did not submit a PDM. *Id.* at 5. Because Scott failed to submit a PDM, Scott's proposal was not evaluated and was given a rating of "Reject." AR, Tab 11, Final Proposal Revision Letters at 1. Subsequently, the agency opened discussions, and on December 18 sent Scott the following notice:

Pursuant to [Federal Acquisition Regulation (FAR)] 15.307(b), this is the government's formal written notification that discussions are opened. . . . Your firm is afforded the opportunity to address these areas of concern identified by the government. In addition . . . Scott Investigations & Research, LLC, may submit any revision, clarification, explanation, or additional information . . . that it may wish to provide at this time. If your firm does not respond to this notice by the specified date and time, your offer will be evaluated based upon its original submission.

* * * * *

Technical /PDM:

PDM evaluation was not conducted. . . . Scott Investigations & Research, LLC did not submit signed amendment or PDMs prior to the time set for closing of offers. Scott Investigations & Research, LLC is given a rating of "Reject" as this PDM was not received at DLA Troop Support or DEVCOM SC.

* * * * *

Failure to address the above aspects of your proposal correctly and completely could lead to your company's proposal being considered technically unacceptable, and therefore not evaluated further for purposes of the award.

* * * * *

Submission of any proposal revisions must be received by 3:00 PM, local Philadelphia time, on or before January 7, 2025 to be considered.

Id. at 1-2.

Scott submitted its final proposal revision which included a PDM that was evaluated as unacceptable. COS/MOL at 6; AR, Tab 16, PDM Eval. at 1. The agency determined that the offered water pouch was unacceptable because it did not have a center spout, and the water had a plastic chemical flavor. *Id.* On February 20, the agency awarded the contract to AmeriQual Packaging. AR, Tab 20, Contract. Scott was provided a debriefing on February 21 and submitted this protest to our Office the same day.

DISCUSSION

Scott protests that the solicitation was restrictive of competition, and that the agency failed to engage in meaningful discussions. As discussed below, Scott's protest is without merit.¹

Solicitation Challenges

Scott protests that the sterilization requirements are restrictive of competition because, according to Scott, only AmeriQual can comply with them. Scott also protests that the evaluation of the PDMs was improperly based on subjective organoleptic qualities such as taste, instead of the purity of the drinking water.

These bases of protest are untimely. Under our Bid Protest Regulations, a protest challenging an impropriety apparent from the face of the solicitation must be filed prior to the closing date for the receipt of proposals. 4 C.F.R. 21.2(a)(1). Here, the sterilization requirements and the fact that the evaluation would be based on organoleptic factors were evident from the solicitation as issued, and the closing date for the receipt of proposals was November 12, 2024. Since

¹ Scott has raised numerous corollary arguments. We have considered each of them and find that none provides a basis to sustain the protest. Our decision discusses the primary issues raised by Scott.

Scott did not first raise these issues until its February 21, 2025, protest with our Office, they are untimely and are dismissed.

Meaningful Discussions

Scott also protests that the agency failed to hold meaningful discussions. Scott asserts that the agency never indicated that negotiations were completed or allowed Scott to submit a final proposal revision. Scott states that after submitting its proposal revision on January 7, it conducted further research and was ready to continue negotiations. The protester complains that it wanted the opportunity to submit a second PDM that would meet the solicitation requirements. Scott notes that the solicitation provided that if an offeror submitted a PDM that was evaluated as unacceptable, and negotiations were held, the offeror would be permitted to submit a second PDM. The protester asserts that negotiations were held and Scott's PDM was evaluated as unacceptable so in accordance with the solicitation the agency was required to permit Scott to submit a second PDM.

The agency disputes Scott's allegations. The agency asserts that it informed Scott of the deficiencies in its initial proposal, including Scott's failure to provide a PDM, and provided Scott with the opportunity to correct those deficiencies. COS/MOL at 10. The agency also notes that it provided all offerors a common cut-off date to submit final proposal revisions, and did not indicate that further discussions should be anticipated. *Id.* The agency further asserts that since Scott failed to provide a PDM with its initial proposal, after the PDM that Scott submitted with its final proposal revision was evaluated as unacceptable, the agency was not required to allow Scott to submit a second PDM. *Id.* at 13.

On this record, we find that the agency held meaningful discussions with Scott. Discussions, when conducted, must identify proposal deficiencies and significant weaknesses that could be addressed to materially enhance the offeror's potential for receiving award. *Serco Inc.*, B-405280, Oct. 12, 2011, 2011 CPD ¶ 237 at 11. However, agencies are not required to reopen discussions to afford an offeror an additional opportunity to revise its proposal where a weakness or deficiency is first introduced in the firm's revised proposal. *MetalCraft Marine, Inc.*, B-410199, B-410199.2, Nov. 13, 2014, 2014 CPD ¶ 338 at 10; *Raytheon Co.*, B-403110.3, Apr. 26, 2011, 2011 CPD ¶ 96 at 7.

Scott's initial proposal was evaluated as unacceptable because Scott did not provide, among other things, the required PDM. The agency opened discussions and advised Scott that it was required to submit a PDM and provided Scott the opportunity to submit a revised proposal, including a PDM, that complied with the solicitation requirements. AR, Tab 11, Final Proposal Revision Letter at 1. The agency therefore advised Scott of the deficiency in its proposal and provided Scott the opportunity to correct it, thus meeting its obligation to hold meaningful discussions. When Scott submitted a PDM with its final proposal revision that

was evaluated as unacceptable, the agency was not required to reopen discussions to allow Scott the opportunity to correct the deficiency--the unacceptable PDM--that was introduced in its revised proposal. See *MetalCraft Marine, Inc.*, *supra*; *Raytheon Co.*, *supra*.²

As noted above, Scott also complains that the agency failed to notify Scott that negotiations were completed or allow Scott to submit a final proposal revision. Scott states that after submitting its proposal revisions on January 7, it conducted further research and was ready to continue negotiations.

The discussions notice sent to Scott referenced FAR section 15.307(b), which addresses proposal revisions, and requires that at the conclusion of discussions each offeror still in the competitive range be given an opportunity to submit a final proposal revision; the contracting officer is required to establish a common cut-off date for the receipt of final proposal revisions. Further, requests for final proposal revisions must advise offerors that the final proposal revisions shall be in writing and that the government intends to make award without obtaining further revisions.

Here, the discussions notice provided that proposal revisions must be submitted by 3:00 PM on January 7. AR, Tab 11, Final Proposal Revision Letters at 2. The notice further stated that if Scott did not respond to the notice by the specified date and time its offer would be evaluated based on its original submission. *Id.* at 1. Finally, the notice stated that failure to address the noted aspects of its proposal correctly and completely could lead to the proposal being considered technically unacceptable, and not further evaluated for award. *Id.* at 2. In addition, all offerors were provided the same date and time to submit proposal revisions. See *id.* at 1-16.

Accordingly, the record shows that the agency provided a common cut-off date for all offerors to submit a formal proposal revision. COS/MOL at 5-6. Moreover, while Scott believed the negotiations would be ongoing, as noted, the letter specifically stated that if Scott did not respond to the request for a proposal revision its proposal would be evaluated based on its original submission. This should have put Scott on notice that the agency intended to make an award without obtaining further revisions. Given these factors we find that the agency's conduct of negotiations was reasonable and consistent with the FAR. See *OMNIPLEX World Servs. Corp.*, B-406251, B-406251.2, March 14,

² Scott asserts that the solicitation permitted offerors to submit a second PDM if the agency held additional negotiations. To be clear, Scott did not submit a PDM with its initial proposal and the agency permitted Scott to submit a revised proposal with a PDM that was evaluated as unacceptable. The agency did not hold further negotiations after it received Scott's revised proposal with its PDM and evaluated it as unacceptable. The agency was not required to provide Scott with a second opportunity to submit an acceptable PDM.

2012, 2012 CPD ¶ 113 at 5. (language giving notice to all offerors of a common cut-off date for receipt of offers has the intent and effect of a request for final proposal revisions).

The protest is denied.

Edda Emmanuelli Perez
General Counsel