



Decision

Matter of: ESC, Inc.

File: B-423406; B-423406.2

Date: June 30, 2025

Laurence L. Socci, Esq., The Socci Law Firm, PLLC, for the protester.
David R. Warner, Esq., Heather Mims, Esq., and Tyler Freiburger, Esq., Warner PLLC, for the intervenor, Native American Technology Corporation.
Colonel Nina R. Padalino, Major Sarah Needham, and Isabelle P. Cutting, Esq., Department of the Air Force, for the agency.
Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the awardee's eligibility for award is dismissed where the protester's contentions that the awardee failed to comply with solicitation requirements lack a valid basis of protest.
2. Protest that the evaluation of proposals was inconsistent with oral instructions received from the contracting officer's representative prior to the proposal submission date is dismissed as untimely where the ambiguity was evident on the face of the solicitation but was not challenged by the protester prior to the solicitation closing date.

DECISION

ESC., Inc., a women-owned small business (WOSB) located in Arlington, Virginia, protests the issuance of a task order to Native American Technology Corporation, a WOSB located in Leesburg, Virginia, under fair opportunity proposal request (FOPR) No. FA7014-25-R-0006, issued by the Department of the Air Force, for joint training, exercise, and evaluation program services. The protester argues that the awardee is ineligible for award and that the agency's evaluation was inconsistent with oral instructions provided to ESC.

We dismiss the protest.

BACKGROUND

On February 13, 2025, in accordance with Federal Acquisition Regulation (FAR) subpart 8.4, the Air Force issued the FOPR *via* the General Services Administration's (GSA) eBuy website. Dismissal Req. at 2; *id.*, attach. 6, FOPR at 1. The solicitation, which was issued as a WOSB set-aside, anticipated the issuance of a fixed-price task order for a base year and four 1-year options.¹ FOPR at 31. The solicitation provided for the issuance of the task order on a best-value basis, using a tradeoff process considering technical approach and cost/price. *Id.* at 2.

The agency received timely proposals from both ESC and Native American. Dismissal Req. at 2. On March 21, 2025, the Air Force notified the protester that award had been made to "NATECH LLC in the amount of \$6,272,659.20 with a base period and 3 option years." Protest, exh. 1, Non-Award Letter at 1. ESC subsequently filed this protest with our Office.

DISCUSSION

ESC argues that NATECH LLC is ineligible for award because the company is not identified in the proper databases as a WOSB with a GSA MAS contract under the applicable NAICS code as required by the FOPR. Protest at 4-5. The protester also asserts that proposals were not evaluated equally because the task order was issued for a base year with three options, instead of for a base year and four options as specified in the FOPR. *Id.* at 5-6. In addition, ESC alleges that the awardee failed to execute the Standard Form (SF)-1449 in accordance with the solicitation's instructions, thereby rendering the proposal non-binding and ineligible for award. Supp. Protest at 2. Finally, the protester maintains that the agency's evaluation of proposals was inconsistent with oral instructions it received from the contracting officer's representative prior to the proposal submission date regarding the solicitation's required level of effort. Supp. Protest at 3. As discussed below, we dismiss the first three arguments as legally insufficient and the fourth argument as untimely.

Insufficient Bases of Protest

ESC argues that NATECH LLC is not eligible for award because it is not registered in the System for Award Management (SAM), is not a small business, is not a WOSB, and does not hold a GSA schedule contract. Protest at 4-5. The agency and intervenor assert that these arguments lack a legally sufficient basis of protest because they are based on the identification of the wrong awardee. We agree.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. Our role in resolving

¹ Specifically, the solicitation was limited to women-owned small business vendors holding a GSA multiple award schedule (MAS) contract with North American Industry Classification System (NAICS) code 541611, administrative management and general management consulting services, with a size standard of \$15 million. FOPR at 31.

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, 4 C.F.R. §§ 21.1(c)(4) and (f), 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. These requirements contemplate that the protester will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Delta Risk, LLC*, B-416420, Aug. 24, 2018, 2018 CPD ¶ 305 at 10. Where a protester relies on a factually inaccurate premise or bases its protest on a misunderstanding, it fails to provide factual grounds that are legally sufficient to support its protest. *Pitney Bowes, Inc.*, B- 422528, May 23, 2024, 2024 CPD ¶ 123 at 4.

In response to the protest, the Air Force explains that it incorrectly identified the awardee in the non-award letter as NATECH LLC, rather than by the awardee's full name, Native American Technology Corporation. Dismissal Req. at 2. Using the awardee's full name, the agency maintains that the awardee is "registered as an [Small Business Administration] (SBA)-certified WOSB on SAM.gov that performs Administrative Management and General Management Consulting Services under NAICS code 541611." Dismissal Req. at 2; *id.*, attach. 1, SAM Printout at 1-4. The agency also notes that using the full name, Native American Technology Corporation, the GSA eLibrary shows that the awardee is a GSA schedule holder and that GSA's Acquisition Solutions Navigator shows that the awardee held its GSA schedule contract at the time of proposal submission. Dismissal Req. at 2; *id.*, attach. 4, GSA Printout at 1-2.

In addition, the intervenor confirms that its "legal name is Native American Technology Corporation, with 'NATECH' occasionally being used as shorthand." Intervenor Resp. to Dismissal Req. at 1; *id.*, attach. 1, Decl. of Native American President at 2. The intervenor explains, however, that its policy "is and always has been that all officially signed documents are in its full legal name – *i.e.*, Native American Technology Corporation." Intervenor Resp. to Dismissal Req. at 1; *id.*, attach. 1, Decl. of Native American President at 2. In this regard, the intervenor states that "Native American Technology Corporation" is the entity that is (1) registered in SAM, (2) listed as a small business under NAICS 541611, (3) listed as a WOSB, and (4) the entity which holds its GSA Schedule. Intervenor Resp. to Dismissal Req. at 1; *id.*, attach. 1, Decl. of Native American President at 2-3.

Based on the record, the protester's allegations fail to state a valid basis of protest because they are based on a factually inaccurate premise--*i.e.*, that the awardee is NATECH LLC. The record reflects that, although the agency's non-award letter erroneously identified NATECH LLC as the awardee, Native American Technology Corporation is the entity that submitted a proposal and to which the agency issued the task order. Dismissal Req., attach. 2, Native American Cost/Price Narrative Cover Page at 1; *id.*, attach. 7, Native American Task Order at 1. The protester's misunderstanding or reliance on a factually inaccurate premise fails to provide factual

grounds that are legally sufficient to support its protest. *Pitney Bowes, supra*. As such, these allegations are dismissed.²

Similarly, we find the protester's argument regarding the number of option years considered in the agency's evaluation relies on factually inaccurate information, and thus, fails to state a valid basis of protest. Citing the agency's non-award letter, ESC asserts that "[i]t appears the offer from NATECH LLC was evaluated and awarded based upon a base year and three option years while the offer from ESC was evaluated according to the RFP requirements of a base year and four option years." Protest at 5 (citing Protest, exh. 1, Non-Award Letter at 1) ("FA701425F0119 has been award[ed] to NATECH LLC in the amount of[] \$6,272,659.20 with a base period and 3 option years."). The agency responds that the protester's allegation is based on a "typographical error" and that the agency, in fact, evaluated Native American's proposed price based on issuance of the order for a base period and four options as specified in the FOPR, not three options as incorrectly stated in the letter of non-award. Dismissal Req. at 2 (citing Dismissal Req., attach. 3, Price Evaluation at 1) (showing that the agency evaluated price based on a base year and 4 option years). Because the protester's allegation is premised on factually inaccurate information, it fails to state a valid basis of protest, and therefore, is dismissed. *Pitney Bowes, supra*.

ESC also argues that the awardee "failed to execute the [standard form] SF-1449 in accordance with RFP instructions, thereby rendering the proposal non-binding and ineligible for award." Supp. Protest at 2. In support of this statement, ESC does not point to the awardee's proposal, but rather, points to the task order issued by the agency to Native American. See Dismissal Req., attach. 7, Native American Task Order at 1. The task order reflects that it is signed and dated by both the agency and Native American on March 21, 2025--the date the task order was issued to Native American. *Id.* The protester, however, asserts that the awardee's signature was improperly included on the form in box 30b (the box for the printed name and title of the signer), rather than box 30a (the box for the signature of the offeror), and therefore, "the offer from the intended awardee is non-binding" and "ineligible for award." Supp. Protest at 2-3 (arguing that "a bid which is not signed must be rejected as

² Rather than disputing the agency's and intervenor's assertions regarding Native American's status, the protester argues for the first time in response to the agency's dismissal request that the awardee improperly used "NATECH, LLC" as an unregistered trade name, asserting that "the trade name 'NATECH, LLC' is registered in Virginia and belongs to . . . the owner of [p]rotester, ESC, Inc[.]" Opp. to Dismissal Request at 1-2. Although the protester raises this argument in response to the agency's request for dismissal, filed on April 7, 2025, the protester was on notice of the information providing the basis for its argument--i.e., that the agency issued the task order to "NATECH, LLC" a company name which the protester asserts it owns--as of March 21, 2025, when the agency provided ESC with the non-award letter. Because the protester failed to raise this allegation within 10 days of March 21, this protest issue is untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (requiring protest issues be filed within 10 days after the basis is known or should have been known); *Vigor Shipyards, Inc.*, B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5. Accordingly, this protest ground is dismissed.

nonresponsive because, without an appropriate signature, the bidder would not be bound upon acceptance of the bid”).

In response, the agency points out that the document relied upon by ESC “is the award document,” “not [Native American’s] proposal,” as the protester asserts. Supp. Dismissal Req. at 1. As such, the agency maintains that “all statements . . . regarding the ineligibility of [the awardee] based on the contents of its proposal have no factual basis and, accordingly, no legal basis.” *Id.*

Based on the record, the protester’s argument--that there is not a binding contract between the agency and the awardee because the contract (SF-1449) was not properly signed--fails to state a valid basis of protest. As noted above, the record reflects that the task order was signed and dated by both the agency and Native American on March 21, 2025. Dismissal Req., attach. 7, Native American Task Order at 1. Although the protester alleges that the awardee’s signature was included in the incorrect box, the protester has failed to demonstrate that the contract was not signed by Native American or that there is any indication that Native American is not bound to perform the obligations of the contract.³ Because the protester has not demonstrated, or even asserted, a basis as to why the inclusion of the awardee’s signature in the incorrect box renders the contract non-binding, the protester fails to state a valid basis of protest, and therefore this allegation is dismissed.

Untimely Solicitation Challenge

ESC maintains that the agency’s evaluation of proposals was inconsistent with oral instructions it received from the contracting officer’s representative prior to the proposal submission date regarding the solicitation’s required level of effort. Supp. Protest at 3. Specifically, the protester alleges that, on February 20, 2025--after the solicitation had been released but prior to the March 9 date for receipt of proposals--the contracting officer’s representative for this procurement “provided ESC with specific instructions that the Level of Effort required was for six (6) staff members as opposed to five (5) staff members” and that the “Performance Work Statement (PWS) provided in the [solicitation] was the wrong version.” *Id.* The protester asserts that “[b]ased upon these instructions[,] ESC proposed six (6) full-time staff members,” but that other offerors “were permitted to offer a staffing level of five (5) full-time staff members.” *Id.*

This basis of protest is 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 record

³ While the protester asserts that “a bid which is not signed must be rejected as nonresponsive because, without appropriate signature, the bidder would not be bound upon acceptance of the bid,” Supp. Protest at 2 (citing *Ace Art Company, Inc.*, B-202353, Apr. 1, 1981, 81-1 CPD ¶ 252), the protester’s reliance on a decision of our Office regarding an unsigned sealed bid is not relevant because the solicitation here is a request for proposals, not a sealed bid, and because the SF-1449 is, in fact, signed. Dismissal Req., attach. 7, Native American Task Order at 1.

reflects that, as of March 5, 2025, ESC knew that the solicitation did not require a specific number of staff members or full-time employees (FTEs) based upon answers to offeror questions that were incorporated into the solicitation and publicly posted to SAM. Supp. Dismissal Req., attach. 2, FOPR Questions and Answers (Q&As) at 1, 4 (“The Six Task[s] identified [in the PWS] do not necessarily equate to six positions.” and “[t]he offeror is invited to submit an offer on the number of FTEs that [] best meet the 6 tasks identified.”). To the extent the protester believed based on an oral representation from the contracting officer’s representative that it was required to propose six staff members, this understanding is clearly contradictory to the instructions in the FOPR’s Q&As, which provided offerors with flexibility in determining how many staff to propose and advised that the six tasks do not necessarily equate to six staff positions. Accordingly, to the extent ESC is asserting that the contracting officer’s representative orally disclosed a requirement not set forth in the FOPR, ESC was aware of an alleged ambiguity in the solicitation that it was required to protest before proposals were due on March 9. Its failure to do so renders the protest now untimely. 4 C.F.R. § 21.2(a)(1); see *AST Envtl., Inc.*, B-291567, Dec. 31, 2002, 2002 CPD ¶ 225 at 3.

The protest is dismissed.

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General Counsel