



Decision

Matter of: Wright Brothers Aero, Inc.

File: B-423326.2

Date: July 7, 2025

Kevin M. Keeley, Jr. for the protester.
Deanna Everett, Esq., Defense Logistics Agency, for the agency.
Samantha S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably evaluated the awardee's proposal is dismissed as untimely where the protester filed the protest more than 10 days after the firm knew or should have known the basis of protest.

DECISION

Wright Brothers Aero, Inc., a small business of Vandalia, Ohio, protests the award of a contract to Premier Jet Services DAY, LLC, a small business of Vandalia, Ohio, under solicitation No. SPE607-24-R-0200, issued by the Defense Logistics Agency for aircraft refueling at James M. Cox Dayton International Airport (KDAY) in Dayton, Ohio. The protester contends that the agency unreasonably evaluated the awardee's proposal and failed to reasonably and properly implement corrective action in response to a prior protest.

We dismiss the protest because it is untimely.

BACKGROUND

The agency issued the solicitation on June 13, 2024, pursuant to the procedures of Federal Acquisition Regulation (FAR) parts 12 and 15, for 723,060 gallons of jet fuel at KDAY. See Req. for Dismissal (RFD) at 2. The solicitation provided for award on a lowest-price, technically acceptable basis. See Supp. RFD at 3. On February 4, 2025, the agency notified the protester that award had been made to Premier. Supp. RFD, exh. 4, February Award Notice at 1. The notice provided the contract award price and reflected that only two offerors--Wright Brothers and Premier--had submitted proposals. *Id.* at 1-2. The notice also advised the agency's evaluation determined that "Wright

Brothers Aero, Inc. did not offer the total lowest price technically acceptable for all line items solicited.” *Id.* at 1. The agency subsequently confirmed in a written debriefing, dated February 6, that both proposals were technically acceptable and award had been made to Premier as the lowest-priced, technically acceptable offeror. Protest, exh. 5, Debriefing, B-423326, Feb. 11, 2025.

Wright Brothers filed a protest with our Office on February 11, challenging the agency’s evaluation and award decision. *Wright Bros. Aero, Inc.*, B-423326, Mar. 5, 2025 (unpublished decision). In response, the agency advised our office that it intended to take corrective action by reevaluating proposals, reopening discussions if necessary, and issuing a new award decision. *Id.* at 1. As a result of the agency’s proposed corrective action, we dismissed the protest as academic on March 5. *Id.* at 1-2.

On April 15, in response to an inquiry from Wright Brothers regarding the status of the procurement, the contracting officer advised the protester that the corrective action had been “completed and closed” and that the “KDAY [contract] has been awarded.” RFD, exh. 2, April 15 Emails at 1. When Wright Brothers asked whether it would “be receiving communication on who has won the award,” the contracting officer responded that “[t]he awardee was the same as the original awardee” and that she was unsure if there would be any additional communication until she could “get with Legal.” *Id.*

On April 28, Wright Brothers emailed the contracting officer, requesting an update and asking: “Is it possible to get a debrief since there should have been a corrective action?” RFD, exh. 3, April 28-29 Emails. The next day, the contracting officer responded, “I will forward up to Legal.” *Id.* On May 25, having received no further information from the agency, Wright Brothers filed this protest with our Office. Protest at 1. The agency then requested that we dismiss the protest as untimely and for failing to state a valid basis of protest. RFD at 1-2.

DISCUSSION

Wright Brothers’s current protest challenges the agency’s evaluation and award decision, as well as the agency’s implementation of the corrective action in response to the firm’s earlier protest.¹ Protest at 1-2; Resp. to RFD at 2-7. The agency contends the protest is untimely and should be dismissed. We agree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying

¹ Wright Brothers’s protest also raises allegations that the agency failed to provide a proper notice of the corrective action award and failed to provide a debriefing. These allegations are not subject to review by our Office inasmuch as the adequacy and conduct of a notice of award or debriefing are procedural matters that do not involve the validity of an award. See *Moura’s Cleaning Serv., Inc.*, B-402741.4, Sept. 7, 2010, 2010 CPD ¶ 210 at 3-4.

the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). An exception to this general rule applies with respect to a protest that challenges “a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required.” *Id.* In such cases, with respect to any protest basis which is known or should have been known either before or as a result of the debriefing, the protest must be filed no later than 10 days after the date on which the debriefing is held. *Id.*

Wright Brothers maintains that it delayed submitting a protest because the firm was waiting (1) for the contracting officer to respond to its emails requesting more details about the award, and (2) a debriefing from the agency. Resp. to RFD at 1-2. For the reasons discussed below, these arguments provide no basis for our Office to consider an untimely protest.

More Details

The protester alleges that the agency’s April 15 emails did not include the identity of the successful offeror, award amount, or explanation of the basis for award, and that it delayed filing the protest because it was waiting for this information to be provided in a “formal notice” so it would have “a definitive basis to protest.” Protest at 1-2; Resp. to RFD at 2-7. The record reflects, however, that Wright Brothers’s challenges to the agency’s evaluation and award decision are based on information known to the protester as of April 15, when the agency explained that it had reaffirmed its initial award to Premier. Protest at 1-2; Resp. to RFD at 2-7.

As discussed above, the agency provided Wright Brothers with a notice of award on February 4. Supp. RFD, exh. 4, February Award Notice. In that February notice, the protester was advised that award had been made to Premier. *Id.* at 1. The notice also provided the contract award price, as well as informing the protester that only two offerors had submitted proposals. *Id.* at 1-2. On April 15, through email correspondence with the agency, Wright Brothers was advised that the “KDAY [contract] has been awarded,” and that “[t]he awardee was the same as the original awardee.” RFD, exh. 2, April 15 Emails at 1-2. At that point, through information from the February 4 award notice and the April 15 emails, the protester was aware of (1) the identity of the successful offeror; (2) the awarded amount; and (3) the basis for award (“Wright Brothers Aero, Inc. did not offer the total lowest price technically acceptable for all line items solicited”). RFD, exh. 4, February Award Notice at 1; RFD, exh. 2, April 15 Emails at 1-2. Further, because the Air Force had not requested revised proposals, the protester was on notice that the agency’s reaffirmed award decision was based on the same proposals and, therefore, the awarded price remained unchanged from the February award notice.

We have consistently explained that a disappointed offeror may not delay filing a protest until the firm is certain that it is in a position to detail all of the possible separate grounds of protest. *Centerra Integrated Facilities Servs., LLC*, B-418628, Apr. 23, 2020, 2020 CPD ¶ 155 at 7-8; *CDO Techs., Inc.*, B-416989, Nov. 1, 2018, 2018 CPD ¶ 370 at 5. That is, a protester need not await perfect knowledge before filing a protest. *Peraton Inc.*, B-416916.11, Feb. 8, 2021, 2021 CPD ¶ 88 at 6. Moreover, our timeliness rules do not hinge on whether a protester definitively knew of the basis for its protest but rather, as discussed above, require that a protest be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2); *Magnum Multimedia*, B-420227, Nov. 2, 2021, 2021 CPD ¶ 355 at 5.

Under the circumstances here, Wright Brothers knew or should have known the basis for its protest by no later than April 15, when the agency notified the protester that it had completed its corrective action of reevaluating existing proposals and reawarded the contract to Premier. RFD, exh. 2, April 15 Emails at 1. Thus, in order to be timely, Wright Brothers was required to file its protest within 10 days of April 15, *i.e.*, by April 25. 4 C.F.R. § 21.2(a)(2). Because Wright Brothers did not file its protest until May 25, the protest is untimely.² *Id*; *Magnum Multimedia supra*; *Crown Point Sys.*, B-413940, B-413940.2, Jan. 11, 2017, 2017 CPD ¶ 19 at 8 (finding protest ground

² The protester also takes issue with the agency's conduct in responding to its inquiry regarding the corrective action. Resp. to RFD at 1-2. The record reflects that, in response to the protester's inquiry, the contracting officer twice stated that she would need to confer with other agency personnel before she could provide additional information. RFD, exh. 2, April 15 Emails at 1; RFD, exh. 3, April 28-29 Emails. While the agency's conduct is not a model response, the protester did not submit a request for a debriefing until 13 days after the agency confirmed, by email, that the agency had reawarded the contract to the same offeror (Premier). Nor did Wright Brothers file this protest until 40 days after the April 15 email from the agency.

As noted, our regulations contain strict rules requiring the timely submission of protests; to ensure meeting these timeliness requirements, a protester has the obligation to diligently pursue the information that forms the basis for its protest. *Professional Rehab. Consultants, Inc.*, B-275871, Feb. 28, 1997, 97-1 CPD ¶ 94. Where a protester has not diligently or expeditiously pursued the information that forms the basis for its protest, we will not view the protest as timely. *Prudential Protective Servs., LLC*, B-418869, Aug. 13, 2020, 2020 CPD ¶ 272 at 3. Here, the protester had all the information that formed the basis of its protest by the April 15 email correspondence with the agency. In this connection, waiting 40 days for some unspecified "additional information" that the agency might provide, does not demonstrate a protester's diligent pursuit of the information that forms the basis for its protest, such that its protest can be construed as timely. *Kolb Grading, LLC*, B-420310.2, Dec. 8, 2021, 2022 CPD ¶ 6 at 2 (finding that protester's "delay of 13 days--from the public notice of the award to the protester's request for additional information about the award--shows a lack of diligent pursuit").

untimely filed where it was submitted more than 10 days after the information on which the ground was based was known or should have been known).

Debriefing

The protester also contends that its protest is timely because it “was submitted within a reasonable timeframe following the breakdown in communication and the absence of a required debriefing.” Resp. to RFD at 2. The protester did request a debriefing, and the agency admittedly did not provide one.³ To the extent the protester is arguing that its protest should be deemed timely based on the required debriefing exception to the general timeliness rule, however, we find that any debriefing here would not have been a “required” debriefing, because it was not timely requested. *Centerra Integrated Facilities Servs., LLC, supra* at 5.

As we have explained, when a contract is awarded on the basis of “competitive proposals,” an unsuccessful offeror--upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award--shall be debriefed and furnished the basis for the selection decision and contract award. 4 C.F.R. § 21.2(a)(2); FAR 15.506(a)(1); *Rhonda Podojil--Agency Tender Official*, B-311310, May 9, 2008, 2008 CPD ¶ 94 at 5. Relevant here, a debriefing is only required where it is timely requested--within 3 days of receiving notice of the award decision. FAR 15.506(a)(4)(ii) (stating that untimely debriefing request “does not automatically extend the deadlines for filing protests”); *Rhonda Podojil--Agency Tender Official, supra* at 6 (finding protest did not fall into debriefing exception to general timeliness rule where debriefing request was submitted more than three days after notice of award).

³ The protest included a citation to a GAO decision in support of its argument that the protest was timely based on the agency’s failure to provide a debriefing. Protest at 1 (citing to “*Tech Systems, Inc., B-403103.2*”). After the agency advised our Office that it was unable to locate a decision that matched the citation provided by the protester, we requested that the protester submit a copy of the cited decision. In response, the protester acknowledged that the citation “does not correspond to a published decision issued by” our Office and “was introduced during the use of artificial intelligence-based software, which was employed primarily to support formatting, proofing, and clarity throughout the drafting process, as well as to assist in identifying potentially relevant cases.” Clarification to Initial Protest Filing at 1.

The use of artificial intelligence (AI) programs to draft or assist in drafting legal filings can result in the citation of non-existent decisions, such that reliance on those programs without review for accuracy wastes the time of all parties and GAO. *Raven Investigations & Sec. Consulting, LLC*, B-423447, May 7, 2025, 2025 CPD ¶ 112 at 4. As we have explained, our Office necessarily reserves an inherent right to dismiss any protest and to impose sanctions against a protester, where a protester’s actions

(continued...)

In this instance, Wright Brothers's written request for a debriefing was not made until April 28, 13 days after the agency provided notice of its award decision on April 15. Req. for Dismissal, exh. 3, April 28-29 Emails. As such, the protester cannot invoke the debriefing exception to our timeliness rules to avoid dismissal of its untimely protest. *Rhonda Podojil--Agency Tender Official, supra* at 6.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

undermine the integrity and effectiveness of our process. *Id.* Here, because we dismiss this protest as untimely, we do not exercise our right to impose sanctions for submission of a non-existent, AI-generated citation. The protester, however, is advised that any future submission of filings to our Office with citations to non-existent authority may, after a review of the totality of the circumstances, result in the imposition of sanctions.