



Decision

Matter of: RAS Enterprises, LLC

File: B-423802

Date: September 22, 2025

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Natica Chapman Neely, Esq., Department of Veterans Affairs, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the terms of the solicitation is dismissed as untimely where it was not filed at GAO within 10 days of the solicitation's closing date for receipt of revised proposals, which constituted initial adverse agency action on the protester's agency-level protest.

DECISION

RAS Enterprises, LLC, a service-disabled veteran-owned small business (SDVOSB) of Gulfport, Mississippi, challenges the terms of request for quotations (RFQ) No. 36C26225Q0905, issued by the Department of Veterans Affairs for medical gas cylinders. The protester challenges the agency's decision to not require vendors to possess wholesaler distributor (WD) licenses at the time of quotation submission.

We dismiss the protest as untimely because it was filed more than 10 calendar days after the protester received actual or constructive knowledge of initial adverse agency action on its prior agency-level protest.

On May 14, 2025, the agency issued the RFQ, which was subsequently twice amended, on www.sam.gov as an SDVOSB set-aside for the provision of medical gas cylinders for the Phoenix VA Healthcare System.¹ Req. for Dismissal at 1; Req. for Dismissal,

¹ SAM.gov is the current governmentwide point of entry which serves as the single point where government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed

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exh. 1, RFQ at 1, 5. The RFQ established the due date for quotations as May 27, 2025, at 3:00 p.m. Pacific Standard Time (PST). Req. For Dismissal, exh. 1, RFQ at 1.

On May 27, 2025, at 2:25 p.m. PST, the protester filed an agency-level protest with the contracting officer. Req. for Dismissal at 2; exh. 3, May 27 Agency Protest at 1. In its protest, the protester alleged that the RFQ was defective, in part, because it did not require vendors at the time of quotation submission to possess WD licenses from the state where the vendor is headquartered and in Arizona, where the medical gas cylinders would be delivered. *Id.* at 3.

On June 30, 2025, the contracting officer, in response to the protester's first agency-level protest, determined that the RFQ included errors and that corrective action was required. Req. for Dismissal, exh. 4, June 30 Contracting Officer's (CO) Decision at 1. On the same day, the agency issued amendment two to the RFQ which, in part, purported to add Federal Acquisition Regulations (FAR) clause 52.212-4(q) to the RFQ after the agency believed the clause had been erroneously removed. Req. for Dismissal, exh. 5, RFQ amend. 0002 at 1. FAR clause 52.212-4(q) states that contractors "shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract." FAR clause 52.212-4(q). Contrary to the agency's assertion, however, the original RFQ included FAR clause 52.212-4(q) and the first amendment to the RFQ did not appear to remove the FAR clause. Req. For Dismissal, exh. 1, RFQ at 18; *see generally* exh. 2, amend. 0001. The amendment also extended the due date for quotations to July 8, 2025, at 3:00 p.m. PST. Req. for Dismissal, exh. 5, RFQ amend. 0002 at 1. As relevant to this protest, the amendment did not require vendors to submit their WD licenses with their quotations.

On July 8, 2025, at 10:51 a.m. PST, the protester filed a second agency-level protest in which the protester reraised its initial argument from its first agency-level protest that the agency should require offerors to submit proof of their respective WD licenses with their quotations. Req. for Dismissal at 3; exh. 6, July 8 Agency Protest at 1-2. At 3:00 p.m. PST on the same day, the RFQ closed. On July 28, 2025, the agency dismissed the protester's second-agency protest because it found that the inclusion of FAR clause 52.212-4(q) remedied the issue raised by the protester. Req. for Dismissal, exh. 7, July 28 CO Decision at 1.

On July 30, 2025, the agency awarded the contract to RCG of North Carolina, LLC. Req. for Dismissal, exh. 9, Award Decision at 2. On August 7, 2025, the protester filed the instant protest with our Office.

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electronically by the public. Federal Acquisition Regulation (FAR) 2.101; *Excelsior Ambulance Serv., Inc.*, B-421948, Sept. 27, 2023, 2023 CPD ¶ 220 at 2 n.1.

In its current protest, the protester essentially reraises the same grounds that it raised in its prior agency-level protests, specifically that the agency should have effectively imposed an affirmative responsibility criterion by requiring offerors to submit proof of their WD licenses with their respective quotations. Prior to the agency report due date, the agency requested dismissal of the protest arguing that RAS Enterprises' protest is untimely. Req. For Dismissal at 1. Specifically, the agency contends that the agency's decision to not extend or otherwise modify the due date for the submission of revised quotations after it received the second agency-level protest constituted initial adverse agency action on the protester's second agency-level protest. *Id.* at 5. Therefore, to be timely the protester was required to file its GAO protest within 10 calendar days after the agency's initial adverse action (*i.e.*, the deadline for quotations).

The protester counters that the initial adverse agency action was the agency's dismissal of the protester's second agency-level protest and the protester's GAO protest is, thus, timely because it was filed within 10 days of the agency's decision on the second agency-level protest. Resp. to Req. for Dismissal at 6. To support its argument, the protester points to its first agency-level protest, in which the agency purportedly took corrective action after the agency allowed the due date for quotations to pass, to argue that the protester reasonably believed that the agency had not taken adverse agency action until it dismissed the protester's second agency-level protest. *Id.* at 7. We disagree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Where a protest first has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 calendar days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3). The term "adverse agency action" means any action or inaction on the part of a contracting agency that is prejudicial to the position taken in a protest filed there. 4 C.F.R. § 21.0(e). Once the contracting activity proceeds with opening bids or accepting offers, the protester is on notice that the contracting activity will not undertake the requested corrective action; timeliness is thus measured from this point rather than from the receipt of a subsequent formal denial of the agency-level protest. *See, e.g., LexisNexis*, B-413612, Nov. 29, 2016, 2016 CPD ¶ 356 at 3 n.3; *Lifecare Mgmt. Partners*, B-297078, B-297078.2, Nov. 21, 2005, 2006 CPD ¶ 8 at 10; *Scopus Optical Indus.*, B-238541, Feb. 23, 1990, 90-1 CPD ¶ 221 at 2-3. In this respect, our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Dominion Aviation, Inc.--Recon.*, B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

Here, the protester's July 8 agency-level protest challenged the RFQ arguing that it should require vendors to submit their WD licenses with their quotations. As set forth above, under our decisions, the agency's decision to proceed with the July 8 closing date for the submission of quotations served as initial adverse agency action on the protester's pending agency-level protest. The agency's decision to move forward with the acceptance of quotations, notwithstanding the protester's contention that the RFQ

failed to require vendors to possess the necessary WD licenses, put the protester on notice that the agency was not taking the desired corrective action. Therefore, to be timely, any subsequent protest to our Office had to be filed within 10 days of the closing date, which was July 18. Because the protester did not file this protest with our Office until August 7, 2025, it is now untimely, and we dismiss it. *MLS-Multinational Logistic Servs., Ltd.*, B-415782, B-415708.2, Mar. 7, 2018, 2018 CPD ¶ 105 at 4 (finding that the agency's decision to allow the deadline for proposals to lapse, without revision of the solicitation, was undeniably prejudicial to the protester's position and therefore constituted adverse agency action); *Chase Def. Partners*, B-421411, Apr. 14, 2023, 2023 CPD ¶ 93 at 4 (same).

RAS Enterprises argues that the factual circumstances of its protest distinguishes it from our prior decisions. Specifically, the protester contends that here the agency previously indicated that it would take corrective action in response to its first agency-level protest after the due date for submission of initial quotations had passed, and it therefore reasonably expected the agency to similarly take a responsive action in response to its second agency-level protest notwithstanding the agency's receipt of quotations. Resp. to Req. For Dismissal at 6. The protester also argues that the agency's June 30 decision was confusing because it purported to insert FAR clause 52.212-4(q) into the RFQ, but the FAR clause was already included in the original RFQ. *Id.* at 8. While we acknowledge the agency's prior conduct of purportedly granting relief in response to the first agency-level protest after the agency's receipt of initial quotations and the lack of efficacy of the agency's prior purported corrective action to add a clause that was already incorporated into the RFQ, we do not find that either issue warrants departure from our long line of decisions making clear that the protester is on notice that the agency will not undertake the requested corrective action once the agency proceeds with receipt of quotations.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel