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Decision

Matter of: Alvarez and Associates, LLC

File: B-423591; B-423591.2

Date: July 7, 2025

David S. Black, Esq., Ashley Akers, Esq., Ben R. Smith, Esq., and Gregory R. Hallmark, Esq., Holland & Knight LLP, for the protester.
Tara Nash, Esq., and Nicholas R. Pantages, Esq., Department of Veterans Affairs, for the agency.
Glenn G. Wolcott, Esq., and April Y. Shields, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that does not demonstrate prejudice, and merely reflects speculation regarding the agency's subsequent actions, is dismissed as premature.
 2. Where protest alleging a Procurement Integrity Act violation was filed on the same day the protester gave the agency notice of the alleged violation, the protest is premature and will not be considered.
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DECISION

Alvarez LLC, of Leesburg, Virginia, protests various matters related to request for quotations (RFQ) No. 36C10B24Q0030, issued by the Department of Veterans Affairs (VA), to provide an "Electronic Freedom of Information Act ('eFOIA') Software Solution." Protest at 1.¹ In its initial protest, Alvarez complains that public comments by a "senior official" within the VA have "compromised the integrity of this ongoing procurement." *Id.* In a supplemental protest, Alvarez asserts that additional comments allegedly made by this official establish that a violation of the Procurement Integrity Act (PIA) has occurred. Supp. Protest at 2.

For the reasons discussed below, we dismiss the protests.

¹ The page numbers referenced in this decision are the Adobe PDF page numbers in the documents submitted.

BACKGROUND

On January 15, 2025, the agency issued RFQ No. 36C10B24Q0030, seeking quotations from General Services Administration schedule contractors to provide a software solution supporting the VA's Office of Information and Technology.² The solicitation states that the source selection decision will reflect a best-value tradeoff between three evaluation factors (technical,³ price, and veterans' involvement), and provided that the procurement would be conducted in two steps: (1) evaluation of technical approach and (2) task demonstration. RFQ at 132-33. The solicitation explained that, in step one, the agency would evaluate each vendor's written technical approach and based on that evaluation, vendors would either be invited to participate in step two (task demonstration) or be advised that their quotation had been eliminated from further consideration. *Id.* More specifically, quotations had to receive a rating of at least "acceptable" in step one to be eligible to move forward to step two. *Id.* at 133.

On or before the February 5 solicitation closing date, quotations were submitted by several vendors, including Alvarez. Alvarez states that it offered "AINS, LLC d/b/a OPEXUS" as a subcontractor and describes OPEXUS as "a key member of Alvarez's team." Protest at 1. Thereafter, the agency evaluated the written technical approach of each vendor under step one of the procurement.

On May 21, following completion of the step one evaluation, Alvarez was invited to participate in step two, the task demonstration phase of the procurement. Protest, exh. C, Successful Step One Letter at 1-3. The current record does not reflect any source selection decision; the results of the agency's step two evaluation; or any further agency action in this procurement.

Also on May 21, Bloomberg News published an article that was critical of OPEXUS. Protest, exh. D, Bloomberg Article. More specifically, the article stated that OPEXUS had been "the victim of a cyber breach earlier this year due to a 'major lapse' in security measures." *Id.* at 2. The article further stated that OPEXUS "was compromised in February by two employees who'd previously been convicted of hacking into the US State Department." *Id.* According to the article, which identified the two employees as "twin brothers," "OPEXUS'[s] own investigation found that the brothers' conduct led to an outage of two key software systems used by government agencies to process and manage their records, and in some cases a permanent loss of data." *Id.* The article

² The solicitation states: "[t]he VA FOIA [Freedom of Information Act] office requires an eFOIA system to effectively preserve, collect, process, review, analyze, and produce Electronically Stored Information (ESI)[.]" Protest, exh. A, RFQ at 42.

³ The solicitation stated that the technical factor was divided into two subfactors: (1) written technical approach and (2) task demonstration.

further stated that “OPEXUS declined to comment on whether it conducted a background check on the brothers before hiring them.” *Id.* at 4.

Beginning on May 23, the former FOIA director in the VA’s Office of Information and Technology⁴ posted various comments on the social networking platform LinkedIn that referenced the news article and were critical of OPEXUS. For example, among other things, the former FOIA director stated:

Declining to comment isn’t just abdication--it’s contempt. FOIA requests were lost. Statutory rights were denied, Investigations were disrupted, and that’s just the start of what we know.

Protest, exh. B, LinkedIn Postings at 3.

On June 2, Alvarez filed this protest, characterizing the LinkedIn comments as “falsely alleging that OPEXUS has not provided an adequate and fulsome response to the incident” and “question[ing] OPEXUS’s integrity and fitness to serve as a government contractor.” Protest at 4. In this context, Alvarez complains that the comments create a conflict of interest which the agency has failed to mitigate and asserts that the “integrity of this ongoing procurement” has been compromised. *Id.* at 1-2.

On June 20, Alvarez filed a supplemental protest alleging the existence of a PIA violation.⁵ On that same date (June 20), Alvarez sent a letter to the agency stating “Alvarez . . . submits this notice of a Procurement Integrity Act (‘PIA’) violation related to [the solicitation at issue in this protest],” adding that “we request an investigation into this PIA violation.” Supp. Protest, exh. E, Notice of PIA Violation at 1.

DISCUSSION

As noted above, Alvarez raises various allegations about conflicts of interest that it asserts have “compromised the integrity of this ongoing procurement,” Protest at 1, as

⁴ The agency states that this individual “has been on administrative leave from the Agency since April 11, 2025, when he decided to voluntarily enter the Deferred Resignation Program (‘DRP’) and leave federal government service.” Agency Motion to Dismiss at 2. The agency further notes that the former FOIA director “was never a member of the Source Selection Team for this procurement in any capacity,” and that he “stopped receiving all internal VA communications [on April 11, 2025].” Agency Motion to Dismiss, attach. 1, Contracting Officer’s Conflict of Interest Memorandum, June 18, 2025, at 2.

⁵ Alvarez asserts that, on June 10, Alvarez’s counsel “received a communication” from OPEXUS indicating that “on or around May 26, 2025,” the former FOIA director allegedly spoke with a former OPEXUS salesman and disclosed quotation and source selection information. Supp. Protest at 4.

well as a PIA violation allegation. For the reasons discussed below, we dismiss both the initial protest and the supplemental protest.

With regard to Alvarez's initial protest, we note that competitive prejudice is an essential element of any viable protest. See *DRS ICAS, LLC*, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21-22. Where the record does not establish any prejudice, we will not sustain a protest even if a defect in the procurement is found. See *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12. Further, where a protest merely anticipates subsequent action, the protest is premature and will not be considered. See, e.g., *Accenture Fed. Servs., LLC*, B-418321.4, Jan. 29, 2021, 2021 CPD ¶ 67 at 5; *DGC Int'l*, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343 at 3.

Here, as discussed above, the only action the agency has taken with regard to Alvarez's quotation was to invite Alvarez to proceed to the step two demonstration phase of the procurement; in other words, Alvarez remains in the competition. Further, the agency's step one evaluation, and invitation to proceed to step two, took place prior to publication of the news article and the subsequent comments by the former FOIA director--which form the basis for Alvarez's protest. As also discussed above, the record does not contain any information regarding a source selection decision, the step two evaluation, or any further agency action in this matter. On this record, Alvarez has failed to demonstrate any prejudice flowing from its allegations and, to the extent its protest reflects speculation regarding subsequent agency action, the protest is premature and will not be considered.

With regard to Alvarez's supplemental protest alleging a PIA violation--filed on the same day Alvarez first notified the agency of the alleged violation--the protest is premature. Where a protester seeks to pursue a protest regarding an alleged PIA violation at our Office, the protester must first "report the information it believed constituted evidence of the offense to the Federal agency responsible for the procurement within 14 days after the protester first discovered the possible violation." 4 C.F.R. § 21.5(d). GAO will not generally consider a protest alleging a PIA violation prior to the agency's response to a timely allegation. *IBM Corp.*, B-415798, Mar. 27, 2018, 2018 CPD ¶ 130 at 8-9; *The Panther Brands, LLC*, B-409073, Jan. 17, 2014, 2014 CPD ¶ 54 at 8-9; *Career Training Concepts, Inc.--Advisory Opinion*, B-311429, B-311429.2, June 27, 2008, 2009 CPD ¶ 97 at 7.

Here, GAO conducted a conference call with the parties on June 25, and it is our understanding based on that call that the agency is preparing a response to Alvarez's allegation. Accordingly, we consider Alvarez's supplemental protest to be premature. *IBM Corp.*, *supra*.

Alvarez's initial and supplemental protests are dismissed.

Edda Emmanuelli Perez
General Counsel