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Decision

Matter of: Encon Desbuild JV4, LLC

File: B-423574.2

Date: October 19, 2026

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DIGEST

In a procurement conducted under the two-phase design-build selection procedures of Federal Acquisition Regulation subpart 36.3, protest challenging evaluation of protester's phase one proposal is dismissed as untimely where the protest was filed more than 10 days after the protester received information that formed the basis of the protest.

DECISION

Encon Desbuild JV4, LLC (EDJV4), a small business of Hyattsville, Maryland, protests the exclusion of its proposal from the competition under request for proposals (RFP) No. N69450-25-R-0011, issued by the Department of the Navy, Naval Facilities Engineering Systems Command, for general and design-build construction projects. The protester challenges the Navy's evaluation of its phase one proposal and contends that the agency improperly excluded EDJV4 from the second phase of the competition.

We dismiss the protest as untimely.

BACKGROUND

The Navy issued the solicitation on May 1, 2025, as a total small business set-aside contemplating the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts for various construction projects located in the southeastern United States. Req. for Dismissal, exh. 1, RFP at 1, 7. The solicitation contemplated a 1-year base

period and four 1-year option periods and included a total not-to-exceed amount of \$1.5 billion for all IDIQ contracts. *Id.* at 3, 7.

The procurement was conducted pursuant to the two-phase design-build selection procedures of Federal Acquisition Regulation (FAR) subpart 36.3.¹ *Id.* at 7. Under phase one, the agency would evaluate proposals using four non-price factors: (1) technical approach; (2) experience; (3) safety; and (4) past performance. *Id.* at 12. For the phase one evaluation, the agency contemplated selecting no more than 13 of the most highly qualified offerors to advance to the second phase of the competition. *Id.* at 7. For the phase two evaluation, the solicitation specified the intent to award approximately 8 IDIQ contracts based on the agency's evaluation of offerors' non-price and price proposals using a best-value tradeoff source selection process. *Id.* at 7, 12-13.

Following the phase one evaluation, on June 2, 2026, the agency sent a letter notifying EDJV4 that its phase one proposal was not among the most highly rated proposals and that EDJV4 was not selected to participate in the second phase of the competition. See Req. for Dismissal ex. 2, Unsuccessful Offeror Letter. The letter also stated that "[i]n accordance with [FAR] 15.206, you may submit a written request for a debriefing within three [] days after receipt of this notice[,]” and if EDJV4 requested a pre-award debriefing, “information that can be disclosed is limited to the items specified in FAR 15.206-2.” *Id.* That same day, EDJV4 requested a pre-award debriefing. Protest at 10.

On June 24, the agency provided EDJV4 with a written debriefing. *Id.*; Req. for Dismissal, ex. 3, Written Debrief. The agency's written debriefing provided a summary of EDJV4's phase one evaluation results, including the agency's evaluation of EDJV4's past performance, and indicated that EDJV4 could submit questions. Protest at 10-13; Req. for Dismissal, ex. 3, Written Debrief at 4-7. EDJV4 submitted questions to the agency on June 26, and the agency responded to these questions on July 9. Protest at 13; Req. for Dismissal, ex. 4, July 9 Email at 1. On July 20, EDJV4 filed this protest.

DISCUSSION

The protester challenges the agency's evaluation of EDJV4's phase one proposal. Specifically, the protester contends that the Navy unreasonably assessed various significant weaknesses under the past performance factor and failed to provide EDJV4 with an opportunity to address adverse past performance information before excluding the firm from the competition. Protest at 15-25.

The Navy requests that we dismiss the protest as untimely because it was filed more than 10 days after EDJV4 learned the bases for these allegations. Req. for Dismissal at 3-5. According to the agency, the June 24 debriefing disclosed the challenged

¹ The design-build selection procedures are authorized by 10 U.S.C. § 3241 (formerly codified at 10 U.S.C. § 2305a).

evaluation findings and the agency's reliance on EDJV4's adverse past performance information. *Id.* at 4-5. The Navy further argues that the debriefing (and subsequent answers to questions the Navy provided EDJV4 on July 9) did not toll the 10-day period for filing the protest because the debriefing provided to EDJV4 following phase one was not a required debriefing under FAR part 15. *Id.* at 3-4. Consequently, the Navy contends that EDJV4's protest filed on July 20 is untimely. *Id.*

EDJV4 responds that its protest is timely because the debriefing it received was required. In this regard, EDJV4 notes the solicitation incorporated various FAR part 15 provisions and procedures, which the protester argues is indicative of a procurement conducted on the basis of competitive proposals. Resp. to Dismissal Req. at 1-3. The protester also relies on the contracting officer's statements to the protester that EDJV4 was entitled to a debriefing under Revolutionary FAR Overhaul (RFO) section 15.206.² *Id.* at 3. EDJV4 maintains that its protest is timely because it was filed within 10 days after the agency concluded the debriefing on July 9. *See id.*

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These 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. *Oready, LLC*, B-424508 *et al.*, June 8, 2026, at 2. 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 our general timeliness rule is a protest that challenges "a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required," where a protest would be considered timely if filed within 10 days after the debriefing. *Id.* This exception to our timeliness rules does not apply, however, where an agency provides a debriefing that is not a required debriefing. *U.S. Marine Mgmt., Inc.*, B-420468, Apr. 14, 2022, at 5. Consequently, where a debriefing is not legally required, a protester that delays the filing of a protest until after that debriefing may be untimely as to any grounds of protest it knew or should have known more than 10 days before filing the protest. 4 C.F.R. § 21.2(a)(1)-(2); *Done By Native, LLC*, B-422270, Mar. 29, 2024, at 3.

² The Department of Defense (DOD) issued a class deviation adopting RFO FAR part 15 effective March 16, 2026. DOD-wide *Class Deviation-Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 15, Defense FAR Supplement (DFARS) Part 215* at 1. Although the contracting officer's June 24 communication with the protester referenced RFO FAR section 15.206, the solicitation (issued on May 1, 2025) did not incorporate any relevant provision of the RFO FAR--and the procurement here was conducted under the original FAR provisions as codified in Title 48 of the Code of Federal Regulations. *See generally* RFP at 1-42; *see also* Resp. to GAO Briefing Req. at 2.

Here, we find that the debriefing exception to our timeliness rules does not apply and therefore EDJV4's protest is untimely.

As noted above, this procurement was not conducted pursuant to FAR part 15, but pursuant to the two-phase selection process specified in FAR subpart 36.3. In such a procurement, under phase one, the agency evaluates phase-one proposals "to determine which offerors will submit proposals for" phase two and then selects "the most highly qualified offerors . . . and request[s] that only those offerors submit phase-two proposals." FAR 36.303; 36.303-1(b). These procedures specify that consideration of cost- or price-related factors are "not permitted in [p]hase [o]ne." FAR 36.303-1(a)(2)(iii). In contrast, the phase-two procedures require that solicitations "be prepared in accordance with [FAR] part 15," and that technical and price proposals be submitted and "evaluated separately, in accordance with [FAR] part 15." FAR 36.303-2.

Based on these provisions, our Office has previously concluded that the first phase of a design-build selection conducted under FAR subpart 36.3 is not a procurement conducted on the basis of competitive proposals under which a debriefing is required when requested.³ See *Venergy Grp., LLC*, B-422708, Sept. 10, 2024, at 4-6. In *Venergy*, as here, the protester challenged its exclusion from the competition based on the agency's evaluation of its phase-one proposal. *Id.* Because we determined that the phase one evaluation was not conducted on the basis of competitive proposals, we concluded that the protester's debriefing, following the phase one evaluation, was not a

³ Our Office has explained that the question of whether a procurement is conducted on the basis of "competitive proposals" depends on the acquisition procedures that govern the procurement. For example, our Office has identified the use of FAR part 15 negotiated procedures, evidenced by the issuance of a request for proposals, as a hallmark of a procurement conducted on the basis of competitive proposals. *McKissack-URS Partners, JV*, B-406489.2 *et al.*, May 22, 2012, at 5. Where a procurement is not conducted pursuant to these procedures, we have found that the procurement was not one conducted on the basis of competitive proposals, and that the exception to our timeliness rules does not apply. *Id.*; *The MIL Corp.*, B-297508, B-297508.2, Jan. 26, 2006, at 6 (finding that a procurement conducted under the Federal Supply Schedule procedures of FAR subpart 8.4 are not conducted on the basis of competitive proposals). We have also found that neither an agency's designation of a solicitation as a request for proposals nor its incorporation of selected FAR part 15 procedures necessarily changes the nature of the procurement or the acquisition procedures that govern it. *ITility, LLC*, B-415274.3, Apr. 2, 2018, at 4-5 (noting that although solicitation was characterized as an RFP and included certain FAR part 15 provisions, the procurement sought to establish a blanket purchase agreement with Federal Supply Schedule holders and thus the procurement was not conducted on the basis of competitive proposals sufficient to trigger the debriefing exception to our timeliness rules).

required debriefing and the debriefing exception to our timeliness rules did not apply. *Id.*

We reach the same result here on similar facts as those we confronted in *Venergy*. In this regard, EDJV4 was excluded from the competition based on the agency's evaluation of EDJV4's phase-one proposal. Protest at 3; Req. for Dismissal at 2. Thereafter, on June 24, the agency provided EDJV4 with the basis for the agency's evaluation of EDJV4's phase one proposal, including the agency's evaluation of EDJV4's past performance. Because EDJV4 was provided with the agency's assessment of the firm's phase one proposal on June 24--but did not file its protest challenging the agency's phase one evaluation until July 20--we find that EDJV4's protest is untimely. See *Venergy Grp., supra*.

The protester nevertheless argues that because the solicitation incorporated various FAR part 15 procedures (including those concerning a competitive range, discussions, and the best-value tradeoff) such references indicate that the procurement was conducted under competitive procedures and EDJV4's debriefing was thus required. Resp. to Req. for Dismissal at 1-3. In this regard, the protester acknowledges that the solicitation "refers to both FAR Part 36.3 and Part 15 procedures," but emphasizes that the solicitation did not expressly limit the FAR part 15 procedures to phase two. *Id.* at 3.

We do not agree that the solicitation's references to FAR part 15 procedures establish that the debriefing EDJV4 received was a required debriefing. The fact that an agency conducts a competition, evaluates technical submissions, or uses evaluation techniques also described in FAR part 15 does not, by itself, establish that the debriefing exception applies. See *ITility, LLC, supra*. Instead, the relevant inquiry concerns the procedures governing the phase-one selection that led to EDJV4's exclusion from the competition. See *Venergy Grp., LLC, supra* at 4-6.

As noted above, the RFP expressly established a two-phase selection process conducted in accordance with FAR subpart 36.3 procedures. RFP at 7, 12-23. The solicitation described the phase one evaluation as a "narrowing phase," and made no mention of incorporating FAR part 15 procedures into the phase one evaluation. *Id.* at 7. The solicitation reserved the submission and evaluation of price proposals for phase two, and provided that only the highest technically rated phase one proposals would advance to phase two. *Id.* Read in context, the FAR part 15 procedures cited by the protester concern the negotiation and award process corresponding with the second phase and the agency's ultimate selection of contractors following the phase two evaluation. Put simply, we find unpersuasive the protester's contention that various references in the solicitation to FAR part 15 procedures establish that the phase one evaluation was itself a FAR part 15 source selection conducted on the basis of competitive proposals.⁴ See *ITility, LLC, supra*. On this record, we find no basis to

⁴ As we noted in *Venergy*, our Office has repeatedly declined to import FAR part 15 requirements into phase one of a design-build procurement where neither the statute
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distinguish the phase-one selection here from the phase-one selection our Office addressed in *Venergy*.

The protester also asserts that its protest is timely because the contracting officer indicated that the requirements of RFO FAR section 15.206 apply to this procurement.⁵ Resp. to Req. for Dismissal at 3. In this regard, the protester notes that the unsuccessful offeror notice and the debriefing letter state that the Navy was providing EDJV4 with a debriefing in accordance with RFO FAR 15.206.⁶ *Id.* The protester contends that the agency is required “to be bound by its Contracting Officer’s representations,” which suggested the debriefing the agency offered was a required debriefing. Resp. to Req. for Dismissal at 3. We disagree. Indeed, our Office rejected this same argument in *Venergy*, where we noted that the contracting officer’s mischaracterization of a debriefing is not determinative as to whether a debriefing is required. *Venergy Grp., LLC, supra*, at 5 (finding that “a contracting officer’s notice offering a debriefing in accordance with the procedures in FAR section 15.505 does not alter the fact that the debriefing was provided following phase one of a procurement [and] conducted pursuant to FAR subpart 36.3 procedures, rather than FAR part 15.3”). Although the relevant FAR provisions have been relocated from FAR section 15.505 to RFO FAR section 15.206, we similarly find that a contracting officer’s mischaracterization of a debriefing is not determinative as to whether a debriefing is a required one.⁷ *Venergy Grp., LLC, supra*, at 5. Accordingly, we disagree with the

and regulations nor the solicitation made those requirements applicable. *Venergy Grp. LLC, supra*, at 4.

⁵ Section 15.206 of the RFO FAR sets out the pre-award debriefing procedures for offerors excluded from the competitive range or otherwise excluded from the competition before award. These procedures were formerly located in FAR section 15.505.

⁶ As the protester also notes, the DOD adopted class deviations for RFO FAR part 15 and RFO FAR part 36 after the solicitation was issued here, and neither of these deviations or RFO FAR provisions were incorporated into the solicitation. Resp. to GAO Req. for Briefing at 2; see *generally* RFP at 1-42.

⁷ Moreover, we see no basis to find that any change to the FAR compels a different result here. For example, the two-phase design-build procedures now set forth in RFO FAR section 36.101-2 preserve the features material to our analysis: a first-phase qualifications assessment excluding price, followed by a second phase expressly governed by FAR part 15. Compare RFO FAR 36.101-2(b)-(d) with FAR 36.303-1 and 36.303-2. Nor does the relocation of preaward debriefing procedures from former FAR section 15.505 to RFO FAR section 15.206-2 expressly expand the applicability of required debriefings to every procurement in which an offeror is excluded before award. Indeed, similar to the language used in former FAR section 15.502, RFO FAR section 15.206(b) expressly limits the applicability of subpart 15.5 to “competitive proposals.” Compare FAR 15.502 with RFO FAR 15.206(b). Accordingly, EDJV4’s reliance on the RFO FAR debriefing procedures, or the contracting officer’s reference to
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protester that the contracting officer's representations regarding EDJV4's entitlement to a debriefing, or the contracting officer's subsequent answers to the firm's questions, carries any relevance to our resolution of the question of whether the debriefing EDJV4 received was a required debriefing.⁸

In sum, because the debriefing provided to EDJV4 was not a debriefing in a "procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required," the exception for such debriefings in our timeliness rules does not apply. 4 C.F.R. § 21.2(a)(2); *Venergy Grp, LLC, supra*. EDJV4 was therefore required to file its protest within 10 days after the basis of its protest was known or should have been known. Here, EDJV4 was provided with the agency's assessment of the firm's phase one proposal on June 24, but EDJV4 did not file its protest until July 20.

We therefore dismiss the protest as untimely.

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those debriefing procedures, does not establish that those procedures were required for the phase-one selection and subsequent debriefing at issue here. See *Venergy Grp., LLC, supra*.

⁸ In this regard, we find the protester's reliance on *Harris IT Servs. Corp.*, B-406067, Jan. 27, 2012, to be misplaced. There, our Office addressed whether the agency's communications with the protester continued an otherwise required debriefing and we resolved the ambiguity concerning the conclusion of the debriefing in the protester's favor. *Id.* at 5 (finding the protester's challenge timely when filed within 10 days of the agency's conclusion of the debriefing). In contrast, here the question is whether the debriefing following phase one of this procurement was required in the first instance. A contracting officer's willingness to continue answering questions does not convert a debriefing, following phase-one of a procurement conducted under FAR subpart 36.3 procedures, into a required debriefing. See *Venergy Grp., LLC, supra* at 5.