



Decision

Matter of: Quasar Global Technologies, Inc.

File: B-418007

Date: October 30, 2019

Jarl G. Ferko for the protester.

David R. Johnson, Esq., and John M. Satira, Esq., Vinson & Elkins LLP, for ABM Electrical Power Solutions, LLC, the intervenor.

Kimberly Kegowicz, Esq., Department of Veterans Affairs, for the agency.

Kasia Dourney, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the evaluation of a protester's quotation as technically unacceptable, and alleging that an agency improperly decided to cancel a solicitation set aside for service-disabled veteran-owned small business concerns and procure the requirement on an unrestricted basis, is dismissed when the protest is untimely and the protester is not an interested party to challenge the procurement.

DECISION

Quasar Global Technologies, Inc. (Quasar), a service-disabled veteran-owned small business (SDVOSB) concern located in Lancaster, Pennsylvania, protests the Department of Veterans Affairs' (VA) evaluation of its technical quotation under request for quotations (RFQ) No. 36C24419Q0681 (RFQ 0681), for triennial breaker testing at the VA Pittsburgh Medical Center, and the VA's decision to cancel the RFQ, a set-aside for SDVOSBs. Quasar also challenges the agency's decision to procure the requirement on an unrestricted basis under RFQ No. 36C24419Q0974 (RFQ 0974), and to award the contract to ABM Electrical Power Solutions, LLC.

We dismiss the protest.

BACKGROUND

On May 22, 2019, the agency posted RFQ 0681 on the Federal Business Opportunities (FBO) website, as a set-aside for SDVOSBs. Request for Dismissal, exh. 1, Contracting Officer's Statement (COS) at 1. The solicitation sought proposals for

maintenance and testing of the triennial electrical power distribution system at the VA hospital in Pittsburgh. The procurement was conducted as a simplified acquisition under Federal Acquisition Regulation (FAR) part 13.

On June 25, 2019, the closing date for quotations, at 6:09 pm, Quasar--an incumbent on the current triennial breaker testing contract--contacted the agency and requested an extension of the closing date, which the agency granted. Request for Dismissal, exh. 2 at 1-2; COS at 4. The protester submitted its quotation the following day. After evaluating the three quotations received in response to the solicitation, including Quasar's, the contracting officer (CO) determined that none of the quotations was technically acceptable. COS at 2. The CO notified all three vendors on August 1, 2019, that no award would be made under the solicitation. Request for Dismissal, exh. 3 at 1. The protester requested a "debriefing,"¹ in response to which the contract specialist provided a brief explanation of the award via email on August 12, 2019. Id. at 3-4.

Subsequently, the contracting office conducted additional market research and concluded that the nature of the work made it unsuitable for any type of small business set-aside, and that the services should be procured on an unrestricted basis. Request for Dismissal, exh. 4 at 1-6, 16-17. Next, the contracting office sought and received approval to issue an unrestricted solicitation for the requirement.² Id. at 16-17. On August 13, the agency posted RFQ 0974 on the FBO website as an unrestricted procurement for the triennial breaker testing. Request for Dismissal, exh. 5.

On August 14 and 15, the protester called the branch chief of the contracting office to discuss the technical evaluation of its quotation under RFQ 0681. COS at 3. On August 15, Quasar emailed the contracting office with additional information about its company. Request for Dismissal, exh. 5. The protester again contacted the branch chief to discuss the technical acceptability of its previously submitted quotation on September 3. Id. at 2. The protester did not, however, submit a quotation under the unrestricted solicitation (RFQ 0974) by the August 29, 2019 closing date. COS at 4.

¹ Section 13.106-3(d) of the FAR provides that for any procurement conducted under FAR part 13, vendors may request information about the basis for the agency's award decision; in response, the agency is not required to provide a "debriefing" but rather, a "brief explanation of the basis for the contract award." See FAR § 13.106-3(d).

² Specifically, the contracting officer submitted a VA Form 2268, Small Business Program and Contract Bundling Review Form, to the VA small business liaison for approval of an unrestricted solicitation. Request for Dismissal, exh. 4 at 16-17. After the VA small business liaison approved the form on August 2, 2019, it was further submitted to the VA Office of Small and Disadvantaged Business Utilization (OSDBU) and approved on August 8, 2019. Id.

On September 16, the agency awarded the contract under RFQ 0974 to ABM Electrical Power Solutions, LLC, a large business. Request for Dismissal, exh. 7. On September 23, Quasar filed this protest with our Office.

DISCUSSION

The protester contends that the agency unreasonably evaluated its quotation as technically unacceptable under RFQ 0681. Protest at 7. The protester also alleges that the agency's decision to cancel the solicitation that was set-aside for SDVOSBs and procure the requirement on an unrestricted basis violates procurement laws and regulations, including the "Veterans First Contracting Program" and the "Rule of Two." Protest at 8. Quasar also asserts that the subsequent contract award to a large business was improper because it was in disregard of existing contracting preferences for SDVOSBs and other small business concerns. Id.; Protester's Response to Request for Dismissal at 1.

The agency responds that Quasar's protest regarding RFQ 0681 should be dismissed as untimely because it was filed more than 10 days after the contract specialist sent her August 1 email of "no award" to Quasar, notifying the protester that its quotation was found technically unacceptable. Request for Dismissal at 3-4. The agency argues that Quasar knew or reasonably should have known then of its basis of protest, and that its time for filing a timely protest with our Office had to be calculated from that date. Id.

Based on the record, we agree. 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 disrupting or delaying the procurement process. CDO Techs., Inc., B-416989, Nov. 1, 2018, 2018 CPD ¶ 370 at 5; Dominion Aviation, Inc.--Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3. Specifically, a protest based on other than alleged improprieties in a solicitation must be filed not later than 10 calendar days after the protester knew, or should have known, of the basis for protest, with an exception for protests that challenge a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. 4 C.F.R. § 21.2(a)(2). In such cases, protests must be filed not later than 10 days after the date on which the debriefing is held. Id.

Here, as noted by the agency, RFQ 0681 was a simplified acquisition under FAR part 13, for which a debriefing was not required.³ On this record, Quasar was required to

³ The agency explains that while the protester requested a "debriefing," and the agency provided an explanation of the basis for the contract award on August 12, a debriefing was not required for this simplified acquisition conducted under FAR part 13. See FAR § 13.106-3(d). Accordingly, the debriefing exception to our timeliness rules does not apply to this protest. See 4 C.F.R. § 21.2(a)(2). We note that even if the debriefing
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protest the agency's "no award" decision and the notification that its proposal was found technically unacceptable no later than 10 calendar days after August 1. Since Quasar waited over seven weeks after that date to protest this matter,⁴ its challenges regarding RFQ 0681 are untimely and will not be further considered.⁵

Quasar also challenges the agency's decision to procure the requirement under RFQ 0974 on an unrestricted basis, and to subsequently award the contract to ABM Electrical Power Solutions. The protester asks our Office to "terminate the contract award" to ABM and make a new award to Quasar. Protest at 4. We dismiss Quasar's protest of the agency's decision to procure the requirement on an unrestricted basis as an untimely challenge to the terms of the solicitation. We also dismiss the protester's

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exception applied here, the protest is nevertheless untimely as it was filed over a month after the agency provided its "debriefing."

⁴ The protester states that it filed the protest late because it "tried to work it out first" with the VA contracting team and was specifically advised by the contracting officer not to file a protest as the solicitation "was still open" and he needed time "to work issues out." Protest at 5; Protester's Response to Request for Dismissal at 1. Protesters, however, are charged with constructive notice of our bid protest regulations regarding the timeliness of protests, since they are published in the Federal Register and Code of Federal Regulations. The Master Collectors, Inc.--Recon., B-228938.4, Jan. 19, 1988, 88-1 CPD ¶ 47. Further, a protester is on constructive notice of our regulations concerning the proper time for filing a protest, even where allegedly erroneous information is provided by agency personnel. Whelen Eng'g Co., B-239189, Aug. 1, 1990, 90-2 CPD ¶ 89.

⁵ Quasar also asserts that we should review its protest pursuant to the "significant issue" exception to our timeliness rules. Protest at 5. We consider allegations under the "significant issue" exception sparingly, so that our timeliness rules do not become meaningless; we limit such consideration to issues of widespread interest to the procurement community, and which have not been considered on the merits in a prior decision. See 4 C.F.R. § 21.2(c); see also Schleicher Cmty. Corrs. Ctr., Inc., B-270499.3 et al., Apr. 18, 1996, 96-1 CPD ¶ 192 at 7; Scipar, Inc., B-220645, Feb. 11, 1986, 86-1 CPD ¶ 153 at 5. Here, we do not view Quasar's complaint regarding the agency's evaluation of its quotation as technically unacceptable, and the subsequent VA's decision to cancel the set-aside solicitation--both of which have not been protested by any other vendor--as constituting matters of widespread interest to the procurement community that would warrant their resolution in the context of an otherwise untimely protest. See Schleicher Cmty. Corrs. Ctr., Inc., supra. Further, neither of these agency actions fall under the significant issue exception because both are the types of matters that our Office has considered in numerous previous protests.

challenge of the award to ABM because Quasar is not an interested party to challenge the award.

As already noted above, under our strict rules for the timely submission of protests, protests of alleged apparent solicitation improprieties must be filed prior to the closing time for receipt of quotations. See 4 C.F.R. § 21.2(a)(1); Allied Tech. Group, Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 9 n.10. If the protester objected to the specific terms of the solicitation--or, more precisely, believed that RFQ 0974 improperly procured the requirement on an unrestricted basis--it was required to raise this challenge prior to the time set for receipt of quotations, i.e., August 29. Quasar, however, did not file its protest challenging the solicitation as an unrestricted procurement until after the RFQ's closing date and time. Accordingly, we view this protest ground as an untimely challenge to the terms of the solicitation, and dismiss it.

With respect to the protester's challenge of the award to ABM, under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. See 4 C.F.R. §21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Id. Since Quasar did not submit a quotation in response to RFQ 0974, the protester lacks the direct economic interest required to maintain a protest challenging the agency's action pursuant to that solicitation.

The protest is dismissed.

Thomas H. Armstrong
General Counsel