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Decision

Matter of: IT Objects, LLC

File: B-418012.3

Date: April 9, 2020

John R. Tolle, Esq., and H. Todd Why, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for the protester.

James Rhodes, Esq., and Ryan J. Lambrecht, Esq., Department of Commerce, for the agency.

Sarah T. Zaffina, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's implementation of corrective action taken in response to GAO recommendation in prior sustained protest is dismissed where protester fails to state a valid basis of protest.

DECISION

IT Objects, LLC (ITO), a small business of Herndon, Virginia, protests the corrective action that the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) is taking in response to our recommendation in IT Objects, LLC, B-418012.1, B-418012.2, Jan. 2, 2020, 2020 CPD ¶ 2. In that decision, we sustained ITO's protest of the award of a contract to Ahtna RDI, JV, LLC (ARJV), a small business located in Anchorage, Alaska, under request for proposals (RFP) No. 1305M319RNFFS0008 for information technology services including software development and systems administration, for the Alaska Region of the National Marine Fisheries Service (NMFS).

After finding that NOAA's evaluation of the awardee's technical proposal was unreasonable, we recommended that the agency reevaluate the awardee's technical proposal and prepare a new source selection decision, or take other such action permitted by the applicable statutes and regulations. The agency responded to our recommendation by reevaluating the awardee's proposal and deciding to conduct discussions with offerors and request final proposal revisions. The protester contends that these actions are inconsistent with our recommendation and thus are improper.

We dismiss the protest.

BACKGROUND

In our prior decision, we found that the record did not support NOAA's evaluation of ARJV's technical proposal and that ITO was prejudiced by the evaluation. IT Objects, LLC, supra, at 7. We noted that the solicitation required offerors to include letters of commitment from all proposed key personnel and that ARJV's proposal did not include a letter of commitment for the individual proposed for the Systems Administrator 5 (SA 5) key position; therefore, we found ARJV failed to meet a material solicitation requirement. Id. at 6-7. We further noted that we were not persuaded that the agency had considered the teaming agreement included in ARJV's proposal, between Ahtna Global, LLC (AG), one of the ARJV joint venture partners, and the company owned by the individual ARJV proposed for the SA 5 key position, to be a reasonable substitute for the required letter of commitment. Id. at 6-7. We found that although NOAA argued in its supplemental agency report that it viewed the teaming agreement as a reasonable substitute for the necessary letter, there was no contemporaneous evidence in the record that supported the agency's view. Id. Because the record failed to demonstrate that the agency's evaluation of ARJV's technical evaluation was reasonable, we recommended, as noted above, that the agency reevaluate ARJV's proposal and prepare a new source selection decision, "or take such other steps permitted by the applicable procurement laws and regulations." Id. at 7.

On February 14, 2020, the contracting officer notified ITO that the agency had reevaluated ARJV's proposal and determined a competitive range and discussions were necessary. Protest attach. A at 1. The agency informed the protester that it had been included in the competitive range and, in accordance with Federal Acquisition Regulation (FAR) § 15.306(d), provided the protester with a list of all proposal weaknesses.¹ Id. at 1-2. The discussions letter also required ITO to submit updated letters of commitment for all proposed key personnel, even if the letters were already included in the proposal. Id. at 2. Proposal revisions were due March 11, and this protest was filed February 24.

DISCUSSION

The protester argues that by establishing a competitive range, conducting discussions, and consequently, accepting revised proposals, the agency's corrective action exceeds our recommendation and is inconsistent with our finding that the award was improper. Protest at 2.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition

¹ NOAA advised the protester that its proposal did not have any significant weaknesses or deficiencies. Protest attach. A at 1.

are met. Honeywell Tech. Sols., Inc., B-407159.4, May 2, 2013, 2013 CPD ¶ 110 at 3. To achieve this end, our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), (f). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

Here, the protester has failed to allege facts that, if uncontradicted, establish the likelihood that NOAA violated applicable procurement laws or regulations. Our prior decision recommended that the agency reevaluate ARJV's proposal and prepare a new source selection decision, "or take such other steps permitted by the applicable procurement laws and regulations." IT Objects, LLC, *supra*, at 7. After reevaluating ARJV's proposal, NOAA elected to establish a competitive range, conduct discussions, and allow proposal revisions. ITO's current protest does not argue that the agency has taken action prohibited by law or regulation, nor does it argue that the agency has taken action inconsistent with the solicitation terms, which notified offerors that if award was not made based on initial proposals, the contracting officer would establish a competitive range consisting of the highest-rated proposals and would engage in discussions with all offerors in the competitive range. Req. for Dismissal attach. 1, RFP, at 73.

To the extent the protester characterizes our recommendation as prohibiting any agency action beyond reevaluating ARJV's proposal, our recommendation is not so limited. The fact that an agency elects to take corrective measures beyond those recommended by our Office is not in and of itself objectionable so long as the measures taken address the underlying impropriety that led us to sustain the protest and are not otherwise improper. JER 370 Third Street, LLC, B-402025.3, Dec. 16, 2010, 2010 CPD ¶ 299 at 4.

In implementing our recommendation to reevaluate ARJV's proposal, the agency elected to establish a competitive range, conduct discussions, and receive revised proposals, all of which are an inherent part of the procurement process under FAR § 15.306 and the terms of the solicitation. We therefore find that the protester's argument that the agency's action goes beyond what is necessary to remedy the underlying impropriety and exceeds our recommendation in the prior protest fails to state a valid basis of protest. See 4 C.F.R. § 21.5(f).

The protest is dismissed.

Thomas H. Armstrong
General Counsel