

Decision

Matter of: Cydecor, Inc.

File: B-418165.5

Date: March 26, 2021

Nader Elguindi, Cydecor, Inc., for the protester.
Stuart W. Turner, Esq., and Eric Valle, Esq., Arnold & Porter Kaye Scholer, LLP, for Synchron, LLC, the intervenor.
Cara R. Little, Esq., and Michelle S. Bennett, Esq., Department of the Navy, for the agency.
Young H. Cho, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's decision to exclude the protester's expired proposal from the competition is denied where the record shows that the protester did not extend its proposal acceptance period as requested, and the agency's actions in reevaluating proposals did not toll the proposal acceptance period.

DECISION

Cydecor, Inc., of Arlington, Virginia, protests the issuance of a task order to Synchron, LLC, of Fairfax Station, Virginia, under request for proposals (RFP) No. N66604-18-R-3012, issued by the Department of the Navy, to procure program management, financial and business management, technical and engineering management, and integrated logistics support services. The protester challenges the agency's decision to exclude its proposal from the competition.

We deny the protest.

BACKGROUND

The solicitation, issued on August 22, 2018, as a small business set-aside, sought proposals from holders of the agency's SeaPort-e indefinite-delivery, indefinite-quantity (IDIQ) multiple award contract, for comprehensive engineering, program management, and integrated logistics support services for the several offices within the program executive office (PEO) referred to as PEO Submarines (PEO SUB) and Team

Submarine.¹ Agency Report (AR), Exh. 2, Conformed Solicitation at 1, 7, 94.² The solicitation contemplated the issuance of a cost-plus-fixed-fee, fixed-price, and cost-reimbursable task order, with a 1-year base period and four 1-year option periods.³ *Id.* at 19, 94, 95. Award would be made on a best-value tradeoff basis considering technical capability, past performance, and cost/price. *Id.* at 113-114.

The Navy received four timely proposals, including those from Cydecor and Synchron. Contracting Officer's Statement (COS) at 3. On September 23, 2019, the agency made award to Morgan Business Consulting, LLC. *Id.* at 4. Cydecor filed a protest with our Office challenging the award to Morgan. *Id.* Subsequent to the filing of the protest, the agency notified our Office of its intent to take corrective action. *Id.* Specifically, the agency committed to, at a minimum, reevaluating the proposals in accordance with the solicitation and making a new selection decision. B-418165.2, Cydecor, Inc., Electronic Protest Docketing System (Dkt.) No. 18 (Navy confirming that corrective action would "include reevaluations and a subsequent source selection decision."). The agency also stated that it would consider all protest grounds in its review and reserved the right to take any other corrective action as deemed appropriate. AR, Exh. 4, Notice of Corrective Action. The Navy indicated that it would stay performance on the award until completion of the corrective action. *Id.* Based on the agency's proposed corrective action to reevaluate the proposals and make a new selection decision, we dismissed the protest as academic. *Cydecor, Inc.*, B-418165.2, Nov. 7, 2019 (unpublished decision).

During the period of the agency's reevaluation, the Navy requested offerors to extend the validity of their proposals six times. COS at 5. The last request asked offerors to extend the validity of their proposals from November 14, 2020 to December 31, 2020. *Id.* On December 21, the agency informed Cydecor that award had been made to Synchron. AR, Exh. 8, Notice to Unsuccessful Offeror at 1. In that notice, Cydecor was

¹ PEO SUB focuses on the design, construction, delivery, and conversion of submarines and advance undersea and anti-submarine systems. <https://www.navsea.navy.mil/Who-We-Are/Program-Executive-Offices> (last visited Mar. 17, 2021). Team Submarine is a combination of the PEO SUB, the Deputy Commander for the Undersea Warfare, and the Undersea Technology Officer, and unifies once diverse submarine-related activities into a single submarine-centric organization. https://www.secnav.navy.mil/rda/Pages/PEO_Submarines.aspx (last visited Mar. 17, 2021).

² The solicitation was amended once. All citations to the record are to the consecutive numbering in the pages in the Adobe PDF format of the documents provided by the agency.

³ Although this is a task order competition under a multiple-award IDIQ contract, the agency issued the solicitation as an RFP rather than a request for quotations and refers to the submissions of proposals (and offers) from offerors instead of quotations from vendors. For consistency and ease of reference to the record, we do the same.

also informed that its proposal had expired on November 13, because Cydecor had not extended the validity of its proposal beyond that date. *Id.* at 2. This protest followed.

DISCUSSION

Cydecor raises two primary arguments challenging the agency's exclusion of its proposal from the competition. The protester first argues that the proposal acceptance period was tolled because Cydecor was an active participant in a bid protest for which corrective action was ongoing. Protest at 1-2; Comments at 1-3. Cydecor also contends that the request for Cydecor to extend its offer was not properly directed to the authorized representatives identified in its proposal, and therefore Cydecor should not have been excluded from consideration for award because of the agency's error.⁴ Protest at 2; Comments at 3-4.

The Navy asserts that Cydecor's offer acceptance period was not tolled because Cydecor's protest had been resolved more than a year prior to the expiration of its proposal. Memorandum of Law (MOL) at 5-7. The agency also contends that appropriate Cydecor personnel were aware of the agency's request to extend its proposal. *Id.* at 7-9.

A solicitation's minimum acceptance period is a material requirement. *Emagine IT, Inc.*, B-416344.3 *et al.*, Dec. 21, 2018, 2019 CPD ¶ 8 at 4; *Banknote Corp. of Am., Inc.*, B-278514, Feb. 4, 1998, 98-1 CPD ¶ 41 at 3. An offeror's compliance with a solicitation's acceptance period is required so that all offerors share the same business risks of leaving their bid or proposals open for acceptance by the government for the same amount of time. *Global Auto., Inc.*, B-406828, Aug. 3, 2012, 2012 CPD ¶ 228 at 3-4.

We have long recognized that when an agency requests that an offeror or bidder extend its acceptance period, it is the responsibility of each offeror or bidder that desires to extend its acceptance period to communicate assent, either by ensuring that the agency receives an express extension or by conduct from which the agency can infer the offeror's or bidder's intent. *M.J.S., Inc.*, B-244410, Oct. 17, 1991, 91-2 CPD ¶ 344 at 4; *Pegasus Alarm Assocs., Inc.*, B-225597, Apr. 16, 1987, 87-1 CPD ¶ 417 at 3. Additionally, our Office has explained that the burden of ensuring agency receipt of the extension is on the offeror. *Western Star Hosp. Auth., Inc.*, B-414198.2, B-414198.3,

⁴ In filing and pursuing this protest, Cydecor has made arguments that are in addition to, or variations of, those discussed below. While we do not address every issue raised, we have considered all of the protester's arguments and conclude that none furnishes a basis on which to sustain the protest. For example, Cydecor challenges the agency's best-value tradeoff determination. Protest at 4. Because we find that the agency reasonably excluded Cydecor from the competition because its proposal had expired, Cydecor is not an interested party to challenge the agency's selection decision, and we need not address Cydecor's challenges to the agency's best-value tradeoff decision. See, e.g., *Adams and Assocs., Inc.*, B-417495, July 23, 2019, 2019 CPD ¶ 262 at 5.

June 7, 2017, 2017 CPD ¶ 183 at 8; *Discount Mach. & Equip., Inc.*, B-244392, Oct. 15, 1991, 91-2 CPD ¶ 334 at 3.

In rare instances, agencies may infer an extension of a bid or offer acceptance period, where the offeror has taken some affirmative step that provides clear evidence of its intent to extend, and the contracting agency has been fully aware of this action.

Discount Mach. & Equip., Inc., *supra*. For example, an offeror that pursues a protest with our Office (or with the agency) provides evidence of its intent to extend its offer acceptance period and to be bound by the offer if the protest were sustained. *East West Research, Inc.*, B-237844, Feb. 28, 1990, 90-1 CPD ¶ 248 at 3; *Carothers Constr., Inc.*, B-235910, Oct. 11, 1989, 89-2 CPD ¶ 338 at 1 n.1. Generally, a party's active participation in a bid protest tolls its bid acceptance period until the protest is resolved. *Native Res. Dev., Inc.*, B-246597.2, B-246597.3, July 13, 1992, 92-2 CPD ¶ 15 at 9.

On this record, we find the agency reasonably excluded Cydecor's proposal from the competition on the basis that Cydecor's proposal had expired. First, we do not agree with Cydecor's assertion that its proposal acceptance period had been tolled because, according to Cydecor, it was an active participant in a bid protest. Protest at 1-2; Comments at 1-3. Cydecor's protest challenging the agency's initial award under the solicitation was resolved on November 7, 2019, when our Office dismissed its protest as academic based on the agency's corrective action. *Cydecor, Inc.*, *supra*. Specifically, our Office dismissed Cydecor's protest because the agency committed to reevaluating proposals and making a new selection decision. *Id.* As well as maintaining a stay on performance, the agency also advised that it would consider all protest grounds in its review and reserved the right to take any other corrective action as deemed appropriate. *Id.*

The protester argues that the agency's statement that it would "consider all protest grounds raised" during its review and reevaluation gave Cydecor the status of "an active participant" to an ongoing protest. Comments at 2. This argument has no merit. Our dismissal of Cydecor's protest was not "predicated" or conditioned upon these additional actions, as Cydecor contends. *Id.* Rather, our dismissal was based on the fact that the agency's commitment to reevaluate proposals and making a new selection decision rendered Cydecor's protest--which challenged the evaluation of its own and Morgan's proposal--academic. *Id.* (citing *Sun Chem. Corp.*, B-288466 *et al.*, Oct. 17, 2001, 2001 CPD ¶ 185 at 12). Contrary to the protester's assertions, Cydecor cannot be considered "an active participant" to a protest that has been dismissed.

Similarly, we are not persuaded by Cydecor's argument that the agency's exclusion of the firm's proposal was unreasonable because the agency failed to address its request for extension of proposals to the appropriate Cydecor personnel. Cydecor premises its argument on a provision of the solicitation that required offerors to identify "persons authorized to negotiate on the Offeror's behalf with the Government in connection with this solicitation." Comments at 3 (citing RFP at 101). Cydecor contends that its proposal only identified its president as its "Offeror POC [point of contact]," and its

contracts manager as its “Alternative Offeror POC.” AR, attach. B, Cydecor’s Complete Proposal, Vol. I-Administrative, at 5. Cydecor effectively argues that the act of listing those two representatives in its proposal deprived all other Cydecor employees and officers of the authority to extend the validity of its offer. Yet, Cydecor cites no legal authority for the interpretation that the listing of authorized individuals in its proposal is an exclusive--rather than inclusive--act. Without more, we have found this type of argument lacks merit. See *Sigma Space Corp.--Recon.*, B-410062.4, Mar. 9, 2015, 2015 CPD ¶ 104 at 3-4 (finding that listing one authorized representative on proposal did not deprive other officers or employees of authority to extend the validity of an offer).

Here, the record shows that between December 2019 and November 2020, the Navy sent six requests to offerors (including Cydecor) to extend the validity of their proposals, and also shows that Cydecor’s response to each request was provided by an employee other than those named in the proposal as the primary or alternative POC. See generally AR, Exh. 6, Extension Reqs. through Nov. 12, 2020;⁵ Exh. 7, Extension Req. & Acknowledgment of Nov. 12, 2020. In response to the first five extension requests, Cydecor agreed to extend the validity of its offer. Indeed, the last written extension provided by Cydecor was on October 30, when Mr. C.R., an employee of Cydecor, sent an email to the Navy stating, “Cydecor and its proposed Subcontractors concur with the validity extension through 13 November 2020.” AR, Exh. 6f, Extension through Nov. 13, 2020, at 1.

On November 12, the Navy requested a sixth extension of proposals through December 31, 2020. AR, Exh. 7, Extension Req. & Acknowledgment of Nov. 12, 2020, at 1. Cydecor replied to the extension request, stating that “we have received your request and will respond no later than 13 November.” *Id.* Cydecor, however, did not respond to the agency on November 13--or any time after--to provide an extension of the validity of its proposal. COS at 5.

Given the identity of all the prior respondents to the agency’s extension requests, Cydecor’s contention now that only the two individuals identified in the proposal had authority to “negotiate with government” suggests that this proposal may have expired much sooner than the Navy previously thought. Specifically, the logical application of Cydecor’s assertion means that Cydecor’s proposal expired even earlier than November 13.⁶

Finally, any claim by Cydecor that the Navy acted improperly in communicating the sixth (and final) extension request to an “unauthorized individual” is meritless. See

⁵ The agency provided the combined extension requests and responses in exhibit 6 and as also as separate exhibits (exhibits 6a-6f).

⁶ The protester’s later attempts to argue that some employees had received authorization from Cydecor’s president to respond on behalf of Cydecor is neither supported by the record nor borne out by the communications that Cydecor had with the Navy. Comments at 3; AR, Exhs. 6 and 7.

Comments at 4. The record is clear that the Navy sent the final extension request to Mr. C.R, who was the same individual that had previously communicated with the Navy in confirming the fifth extension on the validity of Cydecor's proposal. AR, Exh. 6f, Extension through Nov. 13, 2020, at 1; Exh. 7, Extension Req. & Acknowledgment of Nov. 12, 2020, at 1.

Moreover, in Mr. C.R.'s response to the Navy acknowledging receipt of the sixth request for extension, he notified the Navy that "we have received your request and will respond no later than 13 November." AR, Exh. 7, Extension Req. & Acknowledgment of Nov. 12, 2020, at 1. Relevant here, Mr. C.R.'s response indicated he copied two other Cydecor employees on the correspondence--one of whom was the president of Cydecor, who was identified as a POC in the proposal. *Id.* If Mr. C.R. was not authorized to "negotiate with the government" as Cydecor now claims, it was incumbent upon Cydecor to convey that information to the Navy. Rather the record reveals that Cydecor's president (and authorized representative) was aware of the extension request from the Navy and did not respond, either by confirming the extension of Cydecor's proposal or by notifying the Navy that Mr. C.R. was not authorized to represent the company on this matter. Accordingly, Cydecor's arguments provide no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel