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Decision

Matter of: Panum Telcom, LLC

File: B-418202

Date: January 17, 2020

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David S. Black, Esq., Gregory R. Hallmark, Esq., Vijaya S. Surampudi, Esq., and Kelsey M. O'Brien, Esq., Holland & Knight LLP, for Integral Consulting Services, Inc., the intervenor.

Carl J. Verneti, Esq., and Ross Boone, Esq., Department of Homeland Security, for the agency.

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

DIGEST

Protester is not an interested party for purposes of challenging the agency's evaluation of awardee's proposal where the protester has not challenged an intervening offeror, and the record shows that, even if the protest were sustained on this ground, the protester would not be next in line for award.

DECISION

Panum Telcom, LLC, of Bethesda, Maryland, protests the issuance of a task order for acquisition and contract support services to Integral Consulting Services, Inc. (Integral), of Rockville, Maryland, under task order request for proposals (TORP) No. 002011099 issued by the Department of Homeland Security, United States Custom and Border Protection (CBP), under the General Services Administration's One Acquisition Solution for Integrated Services multiple-award, indefinite-delivery, indefinite-quantity contract. Panum protests that the agency's evaluation of the proposed staffing in the awardee's technical proposal was inconsistent with the terms of the TORP and applicable law.

We dismiss the protest.

The agency issued the TORP on April 3, 2019, seeking acquisition and support services to manage the acquisition portfolio for various offices within CBP. Agency Report (AR),

Tab 5, TORP at 1.¹ The TORP contemplated the issuance of a fixed-price task order with a 1-year base period and four 1-year option periods. Id. at 2, 4. The solicitation provided for a best-value tradeoff based on three factors: technical, past performance, and price. Id. at 40-44. The technical factor had three subfactors: technical approach, management and staffing plan, and quality control plan. Id. at 40. The technical and past performance factors, when combined, were significantly more important than the price factor, and the technical factor was more important than the past performance factor. Id. at 44. The agency conducted an overall evaluation of the technical factor, assigning an adjectival rating at the factor level only, and there was no order of importance for the subfactors under the technical factor.² Id. at 40.

The agency received proposals from four offerors, including Panum and Integral.³ Panum's proposal received ratings of satisfactory under the technical factor and satisfactory confidence for past performance, with a proposed price of \$34,489,699.98. AR, Tab 9, Source Selection Decision (SSD), at 25. Integral's proposal received ratings of superior for the technical factor and satisfactory confidence for past performance, with a proposed price of \$21,312,339.33. Id. Given Integral's higher rating under the more important non-price factor, as well as its lower price, the agency determined that Integral's proposal represented the best value and made award to Integral. Id. at 25-26. Panum's protest followed.

Panum alleges that the agency's evaluation of Integral's proposed staffing approach was inconsistent with the terms of the TORP.⁴ Specifically, Panum contends that Integral proposed labor categories that did not meet the experience or skill qualifications required by the TORP, and that Integral's proposal therefore should have received an unsatisfactory rating for the technical factor. The agency and intervenor argue that Panum is not an interested party because the protester did not challenge an intervening offeror that would be in line for award, were we to sustain Panum's protest and

¹ The TORP was amended three times; all citations are to the most recent version of the TORP.

² The ratings for the technical factor were, in order, superior, satisfactory, marginal, and unsatisfactory; the ratings for the past performance factor were satisfactory confidence, no confidence, and unknown (neutral). AR, Tab 8, Summary Evaluation Report, at 2, 9.

³ One offeror's proposal was rejected by the agency, leaving only three offerors eligible for award. See AR, Tab 9, Source Selection Decision (SSD), at 25.

⁴ In its initial protest, Panum also alleged that the agency did not properly evaluate the realism of the awardee's proposed price, unreasonably evaluated Panum's past performance, and applied an unstated evaluation criterion to Panum's proposal. We dismissed Panum's challenge to the agency's evaluation of the awardee's proposed price because the solicitation did not require, and therefore did not permit, a price realism evaluation. Subsequently, in Panum's comments on the agency report, Panum withdrew the two challenges it asserted regarding the evaluation of its own proposal.

recommend that the award to Integral be terminated.⁵ For the reasons discussed below, we find that Panum is not an interested party and dismiss the protest.

In order for a protest to be considered by our Office, a protester must be an interested party, meaning it must have a direct economic interest in the resolution of a protest issue. 4 C.F.R. § 21.0(a); Cattlemen's Meat Co., B-296616, Aug. 30, 2005, 2005 CPD ¶ 167 at 2 n.1. A protester is an interested party to challenge the evaluation of the awardee's proposal where there is a reasonable possibility that the protester's proposal would be in line for award if the protest were sustained. Alutiq Global Sols., B-299088, B-299088.2, Feb. 6, 2007, 2007 CPD ¶ 34 at 9. Where, as here, there is an intervening offeror who would be in line for the award if the protester's challenge to the award were sustained, the intervening offeror has a greater interest in the procurement than the protester, and we generally consider the protester's interest to be too remote to qualify as an interested party. See A-B Computer Sols., Inc., B-415819, Mar. 22, 2018, 2018 CPD ¶ 128 at 3.

Here, the evaluation record shows that another offeror, Offeror A, received the same ratings as the awardee in the two non-price factors, and proposed a price that was only three percent higher than the awardee's proposed price. AR, Tab 9, SSD, at 25. Thus, the proposals for Integral and Offeror A were both higher-rated and lower-priced than the proposal submitted by Panum. Given this, the agency considered only Integral and Offeror A in its best-value determination, and found that both offerors' technical proposals were "essential[ly] equal." Id. Because Integral proposed a lower price than Offeror A, the agency determined that Integral provided the best value to the government. Id. In light of this evaluation record, we conclude that Panum is not an interested party because it would not be in line for award even if we sustained this protest; rather, Offeror A would be next in line for award.

Panum argues that it is an interested party because its allegation that the agency improperly evaluated Integral's proposed staffing also applies to the evaluation of Offeror A's proposal. Protester's Comments on Interested Party Status at 2-3. In this regard, Panum notes that the SSD revealed that Offeror A's proposed price was only 3 percent higher than Integral's price, and that the agency evaluated Offeror A's proposed staffing as causing some level of risk because of the number of junior personnel proposed by Offeror A. Id.; see also AR Tab 9, SSD, at 25. Thus, Panum asserts that the agency's evaluation of both Offeror A's and Integral's proposed staffing was improper because both offerors proposed staffing that failed to meet the requirements of the TORP. Panum contends that because the agency's flawed evaluation affected not only the awardee but also other offerors, it is an interested party notwithstanding the existence of an intervening offeror.

⁵ The intervenor initially raised this argument in its comments on the agency report. Intervenor's Comments at 2-3. Our Office subsequently requested and received responses from both the agency and the protester addressing the protester's interested party status. EPDS Dkt. No. 32 (requesting comments addressing interested party status from protester and agency).

We find this argument untimely. As noted above, the SSD included in the agency report identified the existence of Offeror A as an intervening offeror that received the same ratings as Integral on the non-price factors and proposed a price only 3 percent higher than Integral's proposed price. The SSD also stated the agency's finding regarding potential risk associated with Offeror A's proposed staffing. Despite this information in the SSD, in its comments on the agency report, Panum did not challenge the agency's evaluation of Offeror A's proposal and instead limited its challenge to the agency's evaluation of Integral's proposal. It was not until Panum filed its comments addressing its own interested party status--19 days after the agency filed its report--that Panum first claimed that its allegations regarding the agency's evaluation of Integral's proposed staffing also applied to the evaluation of Offeror A's proposed staffing.

Our bid protest regulations require protests based on other than alleged improprieties in a solicitation to be filed not later than 10 days after the protester knew or should have known of the basis for its protest, whichever is earlier. 4 C.F.R. § 21.2(a). Here, Panum learned of the existence of Offeror A as a potential intervening offeror when the agency issued its report on November 18, 2019, yet failed to challenge the evaluation of Offeror A's proposal until it filed its comments addressing interested party status on December 6, 2019. Accordingly, we find that protester's challenges to the agency's evaluation of Offeror A's proposal are untimely.⁶ As a result, the protester remains an uninterested party.

The protest is dismissed.

Thomas H. Armstrong
General Counsel

⁶ The protester relies on our decisions in L.A. Sys., Inc., B-276349, June 9, 1997, 97-1 CPD ¶ 206 and Hamilton Pacific Chamberlain, LLC, B-409208.2, Apr. 3, 2014, 2014 CPD ¶ 121 in support of its claim that where the agency's flawed evaluation of the awardee also affected other offerors, the protester is still an interested party notwithstanding the existence of intervening offerors. Protester's Comments on Interested Party Status at 4-5. In both of these decisions, our Office determined that the protester was an interested party even though there were intervening offerors; however, neither case discussed whether the protester was aware of the existence of intervening offerors and timely challenged--or failed to challenge--the evaluation of those offerors. Here, the protester knew or should have known from the agency report that a potential intervening offeror existed, and the protester failed to timely challenge the agency's evaluation of that offeror. As a result, we find that these two decisions are distinguishable from the facts in this protest and do not support protester's argument that it is an interested party.