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Decision

Matter of: Trillion ERP Venture Tech, LLC

File: B-418257.4

Date: December 31, 2019

William A. Shook, Esq., The Law Offices of William A. Shook PLLC, for the protester. Alexis J. Bernstein, Esq., and Captain Seiji Ohashi, Department of the Air Force, 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 non-selection to enter into a basic ordering agreement is untimely where it was filed more than 10 days after the basis of protest was known.

DECISION

Trillion ERP Venture Tech, LLC (Trillion), of Reston, Virginia, protests its non-selection to enter into a basic ordering agreement (BOA) under request for quotations (RFQ) No. FA8307-19-R-0133, issued by the Department of the Air Force, for software DevSecOps services.¹ Trillion argues that the agency failed to provide Trillion a debriefing and unreasonably excluded Trillion's quotation.

We dismiss the protest.

BACKGROUND

The RFQ, issued on October 9, 2019 under Federal Acquisition Regulation (FAR) § 16.703, sought to establish multiple BOAs with qualified vendors interested in providing software DevSecOps services for the Air Force. Agency's Request for Dismissal, attach. 3, RFQ Instructions, at 5-7. The RFQ stated that quotations would be evaluated under two factors (technical capability and portfolio review), and in order to be

¹ Although the solicitation never specifically defines "DevSecOps," we understand the term to represent the phrase, "development, security, and operations."

invited to the event day, vendors were required to receive ratings of capable or higher under the technical capability factor and good or higher under the portfolio review factor.² Id. After meeting with qualified vendors at the event day, the agency intended to establish BOAs with the vendors deemed the most capable of satisfying the agency's requirements under the RFQ. Id.

Trillion submitted a timely quotation that was evaluated as capable under the technical capability factor and acceptable under the portfolio review factor. Agency Request for Dismissal, attach. 4, Trillion Disappointed Vendor Letter. As a result, the agency did not find Trillion's quotation to be among the most capable of satisfying the government's requirements, and notified Trillion on November 1, 2019. Id.

On November 4, Trillion requested a debriefing. Agency Request for Dismissal, attach. 5, Debriefing Emails, at 3. On November 5, the agency informed Trillion that because the procurement was conducted under FAR § 16.703, no debriefing was required. Id. at 2. The agency, however, stated that because Trillion requested a debriefing the agency would accommodate the request with a pre-award debriefing consistent with FAR § 15.505, or a post-award debriefing consistent with § 15.506 once the agency had established BOAs with the successful vendors. Id. On November 6, Trillion notified the agency that it elected to receive a pre-award debriefing. Id. Having received no response from the agency, Trillion made an inquiry to the agency on November 13, regarding its request for a pre-award debriefing. Id.; Protest at 2.

Trillion filed a protest with our Office on November 15.

DISCUSSION

Trillion alleges that the agency failed to provide a debriefing required by law and that the agency improperly excluded Trillion's proposal from further consideration. In its protest, Trillion stated that its protest was timely because it was filed within 10 days of being informed that a debriefing was not required. Protest at 2.

Prior to the agency report due date, the agency requested that our Office dismiss Trillion's protest. Agency's Request for Dismissal. The agency asserts that Trillion's November 15 protest is untimely because it was filed more than 10 days after Trillion became aware of the basis of protest. Id. at 2-3. The agency also argues that Trillion's allegation that the agency failed to provide Trillion a debriefing was a legally and factually insufficient basis of protest because the conduct of debriefings is a procedural matter that our Office does not review. Id. at 3.

² The available ratings under the technical capability factor were: highly capable, capable, and not capable. Similarly, the available ratings under the portfolio review factor were excellent, good, acceptable, and unacceptable. Agency's Request for Dismissal, attach. 3, RFQ Instructions, at 6-7.

Trillion objected to the agency's request for dismissal, arguing that it was entitled to a debriefing, as required when the contracting officer excludes an offeror submitting a competitive proposal from further consideration for award.³ Protester's Response at 1-2. The protester contends that because FAR subpart 16.7 is "silent on debriefings or brief explanations or any other means of communicating the actual basis on which any agency decides to exclude a competitor from further consideration . . . the plain language and requirements of 41 U.S.C. § 3705 apply in this instance." Protester's Response at 2. The protester also argues that without a debriefing, it is "placed in the untenable position of having to protest its exclusion without having any understanding of the basis" for the agency's evaluation. Id. at 4.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. The 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. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 5. Under these rules, a protest such as Trillion's, based on other than alleged improprieties in a solicitation, must 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)(2). An exception to this general 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." Id. In such cases, with respect to any protest basis which is known or should have been known either before or as a result of the debriefing, the protest must be filed no later than 10 days after the date on which the debriefing is held. Id.

As explained in the FAR, a BOA is a written instrument of understanding, negotiated between an agency, contracting activity, or contracting office and a contractor, that contains (1) terms and clauses applying to future contracts (orders) between the parties during its term, (2) a description, as specific as practicable, of supplies or services to be provided, and (3) methods for pricing, issuing, and delivering future orders under the BOA. FAR § 16.703(a). A BOA is not a contract. Id. The FAR does not set forth the procedures to be used to issue BOAs nor impose any requirement to issue BOAs through a competitive process. See generally FAR § 16.703.

While we do not agree with the protester that the absence of debriefing provisions under FAR part 16 results in the application of the debriefing requirements applicable to

³ Trillion cites to 41 U.S.C. § 3705(a), which, in relevant part, states:

- (a) Request for Debriefing. When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes that offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within 3 days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award.

negotiated procurement with competitive proposals, we need not resolve whether the debriefing exception to our timeliness rule applies here because Trillion does not in fact, invoke the debriefing exception to our timeliness rules. See Protest at 2; Protester's Response to Agency's Request for Dismissal. Rather, Trillion's protest first challenges the agency's failure to provide it a timely debriefing, unlike what it alleges--without any factual support--the agency provided for other vendors. Protest at 6-7. Our Office, however, has stated that an agency's failure to provide a debriefing is not an issue that we generally will consider because the scheduling of a debriefing is a procedural matter that does not involve the validity of an award. See, e.g., McKissack-URS Partners, JV, B-406489.2 et al., May 22, 2012, 2012 CPD ¶ 162 at 3 n.2. Thus, Trillion's complaints regarding the agency's failure to provide a debriefing are dismissed. 4 C.F.R. §§ 21.1(c)(4) and 21.1(f).

Trillion next challenges the agency's exclusion of its quotation from further consideration arguing that Trillion's quotation should have been assigned a rating of good under the portfolio review factor rather than a rating of acceptable. Protest at 8-9. This protest allegation, however, is based on the information Trillion received in its November 1 letter from the agency to disappointed vendors. See Agency Request for Dismissal, attach. 4. While Trillion attempted to obtain additional information about the agency's evaluation of its quotation, Trillion ultimately did not receive any additional information prior to the filing of its protest with our Office. Protest at 2. Therefore, the basis of Trillion's protest was provided to it in the agency's November 1 letter informing Trillion that its quotation was not among the most capable of satisfying the government's requirements. As a result, Trillion's protest, which was filed on November 15--more than 10 calendar days after receiving its disappointed vendor letter--is untimely. 4 C.F.R. § 21.2(a)(2); see, e.g., ITility, L.L.C., B-415274.3, Apr. 2, 2018, 2018 CPD ¶ 134 at 5-6 (protest challenging establishment of blanket purchase agreements under FAR subpart 8.4 dismissed as untimely where protest was filed more than 10 days after the basis of protest was known).

The protest is dismissed.

Thomas H. Armstrong
General Counsel