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## Decision

**Matter of:** Centerra Integrated Facilities Services, LLC

**File:** B-418628

**Date:** April 23, 2020

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### DIGEST

Protest challenging an award made by the Bonneville Power Administration filed more than 10 days after the protester learned of its bases of protest when the agency provided a non-required written debriefing is dismissed as untimely; the agency's offer to address the protester's questions after providing the debriefing did not toll the timeliness requirements for protest allegations based on the initially provided non-required written debriefing.

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### DECISION

Centerra Integrated Facilities Services, LLC, of Palm Beach Gardens, Florida, protests the award of a contract to Jones Lang LaSalle Americas, Inc., of Washington, D.C., under request for offers (RFO) No. 4600, which was issued by the Department of Energy, Bonneville Power Administration (BPA), for integrated facilities management services. Centerra challenges the agency's evaluation of its proposal under the RFO's non-price factors.

We dismiss the protest as untimely because it was filed more than 10 days after the protester learned of its bases of protest when the agency provided a non-required debriefing.

## BACKGROUND

BPA is a federal entity within the Department of Energy, and was created by the Bonneville Project Act of 1937 to market hydroelectric power generated by a series of dams along the Columbia River in Oregon and Washington. 16 U.S.C. §§ 832-832m. Unlike most executive branch agencies, BPA's contracting activities are not governed by the competition requirements of the Federal Property and Administrative Services Act of 1949, as amended by the Competition in Contracting Act of 1984. 40 U.S.C. § 113(e)(18). Rather, the Bonneville Project Act provides that BPA's contracting authority is subject only to the provisions of that statute. 16 U.S.C. § 832a(f); see also *Gonzales Consulting Servs., Inc.*, B-291642.2, July 16, 2003, 2003 CPD ¶ 128 at 2 n.1. BPA is similarly not subject to the Federal Acquisition Regulation (FAR), but, rather, is governed by BPA's own acquisition policy, the Bonneville Purchasing Instructions (BPI), that implement the procurement authority granted by its organic statute.<sup>1</sup> *Gonzales Consulting Servs., supra.*

BPA owns and operates an estimated 2.7 million square feet of facilities valued at over \$1.15 billion across Oregon, Washington, Idaho, Montana, and California. These facilities include over 1,000 buildings at more than 400 sites, including critical infrastructure (such as control centers and substation control houses), maintenance shops, administrative offices, and warehouses. Additionally, BPA is responsible for its GSA-owned headquarters building, corporate commercially leased spaces, and various non-building assets (such as sewer systems, fences, and roads). Historically, BPA has met its facility-related obligations through the administration of over a hundred contracts. Req. for Dismissal, exh. A.1, RFO at 3.<sup>2</sup>

Through this procurement, however, BPA sought to establish a strategic alliance with a single qualified facilities management contractor. *Id.* Specifically, the RFO, which was issued on June 28, 2019, and subsequently amended three times, contemplated the award of a single indefinite-delivery, indefinite-quantity contract with a fixed-price base

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<sup>1</sup> The BPI is not the product of notice and comment rulemaking in the Federal Register under the Administrative Procedures Act, 5 U.S.C. § 553; rather, it is promulgated by the Head of BPA's Contracting Activity. See BPI, ¶ 1.2(a) (explaining that the BPI is issued by the Head of the BPA's Contracting Activity), and ¶ 1.4 (explaining that the BPI is not published in the Federal Register, but providing for a notice that the BPI may be obtained from BPA); *Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFAI)*, 83 Fed. Reg. 50354 (Oct. 5, 2018) (explaining that the BPI "is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities, and reflects BPA's private sector approach to purchasing the goods and services that it requires").

<sup>2</sup> References to page numbers for exhibits to the agency's request for dismissal are to the Bates numbering provided by the agency.

operations and maintenance component, and time-and-materials above-base services and construction components. *Id.* at 4. The RFO anticipated the award of a contract with a 3-year base period, two priced 1-year options, and five unpriced 1-year options, which will be the subject of further price negotiations between BPA and the awardee if the options are exercised. *Id.* at 256.

Award was to be made to the offer that represented the “best buy” based on a tradeoff analysis between price and three non-price evaluation factors: technical approach; management approach; and past performance relevance and confidence. *Id.* at 10. The non-price factors, when combined, were to be approximately equal to price. *Id.* BPA received two offers, from Centerra and Jones Lang, in response to the RFO.<sup>3</sup> Req. for Dismissal at 4. Ultimately, BPA decided that Jones Lang’s offer was the best buy, and awarded the contract to Jones Lang on March 5. *Id.* at 4. On March 6, BPA notified Centerra that its offer was not selected for award, and that it could request a debriefing. *Id.*; see also Request for Dismissal, exh. A.1, RFO at 12 (incorporating BPI ¶ 12.8.3.2, Debriefing Request). Centerra requested a debriefing the next day.

On March 19, BPA provided Centerra with a written debriefing. The debriefing provided: the offerors’ respective evaluated prices<sup>4</sup>; Centerra’s evaluated strengths, weaknesses, and deficiencies under the three non-price factors; and a brief rationale for BPA’s award decision. Req. for Dismissal, exh. B.1, Debriefing at 2-7. The written debriefing also provided Centerra an opportunity to submit any questions to BPA, and provided that Bonneville would respond to Centerra’s questions in accordance with BPI ¶ 12.8.3, and that “Bonneville’s response to Centerra’s questions marks the conclusion of this debrief.” *Id.* at 7; see also *id.*, Debriefing Transmittal Letter at 1 (“The debriefing is concluded once Bonneville has provided answers to your questions.”).

On March 24, Centerra submitted five questions in response to BPA’s invitation. First, Centerra asked how many offers were submitted. The protester also asked how its proposal was ranked, and how its ratings compared to the awardee’s ratings. Finally, Centerra sought clarification with respect to two of the weaknesses assigned to its offer. *Id.*, Email from Centerra to BPA at 8. On March 27, BPA responded to Centerra’s questions. Specifically, it declined to provide answers to the first three questions citing BPI policy, and provided additional information with respect to the two weaknesses concerning Centerra’s offer. *Id.*, Response to Centerra Debriefing Questions at 11.

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<sup>3</sup> Centerra previously filed a pre-award protest with respect to this RFO; our Office denied that protest. See *Centerra Integrated Facilities Servs., LLC*, B-417963, Dec. 17, 2019, 2019 CPD ¶ 424.

<sup>4</sup> The RFO asked offerors to provide pricing for four different scenarios. For the purposes of the agency’s tradeoff analysis, the agency used the offerors’ respective pricing for the same scenario. Jones Lang’s evaluated price was \$53,752,551; Centerra’s evaluated price was \$57,785,403. Request for Dismissal, exh. B.1, Debriefing at 2-3.

The agency also advised the protester that “[t]his response concludes your debriefing.” *Id.* at 10. On April 1, Centerra filed this protest with our Office.

## DISCUSSION

BPA and Jones Lang seek dismissal of the protest as untimely. 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 Centerra’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.*

The agency and intervenor argue that the protest is untimely because it was filed more than 10 days after the protester received the agency’s March 19 letter. They contend that the protester knew or reasonably should have known of its bases of protest when it received its March 19 letter and, therefore, any protest had to be filed by no later than March 30.<sup>5</sup> Although the agency styled the March 19 letter as a “debriefing,” the agency and intervenor argue that the debriefing exception set forth in our Bid Protest Regulations tolling the filing deadline for a protest until the conclusion of a required debriefing does not apply here for two reasons. First, they argue that this procurement was not conducted on the basis of competitive proposals and second, the debriefing provided to Centerra was not required. Further, the agency and intervenor assert that the agency’s offer to respond to Centerra’s questions did not—and could not—extend the filing deadline for protest grounds based on information that the protester learned on March 19.<sup>6</sup>

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<sup>5</sup> The tenth day following the debriefing was Sunday, March 29. Pursuant to our Bid Protest Regulations, when the last day of an applicable filing period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. 4 C.F.R. § 21.0(d). Thus, the filing due date was Monday, March 30.

<sup>6</sup> BPA also argues that we should dismiss the protest because (1) Centerra is not an interested party for failing to exhaust its administrative remedies by first filing an agency-level protest, and (2) the protest fails to state legally and factually sufficient bases of protest. In addition to joining the agency’s asserted grounds for dismissal, the intervenor also filed an alternative request for partial dismissal seeking to dismiss discrete elements of the protest as failing to state legally and factually sufficient grounds

Centerra opposes dismissal of its protest, arguing that the debriefing exception applies in this case and that its protest was timely filed within 10 days of when the agency concluded the debriefing on March 27. Contrary to the positions taken by the agency and the intervenor, the protester argues that the procurement here was conducted on the basis of competitive proposals and that the debriefing it received was required by the BPI. As a result, the protester contends that it reasonably waited until the conclusion of its debriefing in order to file its protest in accordance with our Bid Protest Regulations.

For the reasons that follow, we find that the debriefing provided to Centerra was not “required” within the meaning of the debriefing exception in our Bid Protest Regulations, and, therefore, it had 10 days from receipt of its March 19 written debriefing to submit any protest grounds based on information that it learned through the debriefing. Because the protester filed its protest on April 1, the protest is untimely.

Although the parties spend considerable effort analyzing whether the procurement at issue was conducted on the basis of “competitive proposals,”<sup>7</sup> a predicate under our regulations to the application of the debriefing exception, we need not address this issue because we find that the debriefing here cannot be classified as a “required” debriefing, another predicate to the application of the debriefing exception. The requirement for a post-award debriefing is established by 41 U.S.C. § 3704, which provides as follows:

When a contract is awarded by the head of an executive agency on the basis of competitive proposals, an unsuccessful offeror, on written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall

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of protest. Because we dismiss the protest as untimely, we need not address these alternative arguments.

<sup>7</sup> When evaluating whether a procurement was conducted on the basis of “competitive proposals” for the purpose of the debriefing exception to our timeliness rules, we have noted that the use of negotiated procedures in accordance with FAR part 15--as evidenced by the issuance of a request for proposals--is the hallmark. See *Millennium Space Sys., Inc.*, B-406771, Aug. 17, 2012, 2012 CPD ¶ 237 at 4. We have also found that task and delivery order procurements conducted pursuant to FAR subpart 16.5, and commercial item procurements utilizing FAR part 12 procedures in conjunction with FAR part 15 procedures similarly are conducted on the basis of “competitive proposals,” and associated debriefings in such procurements can be “required” (subject to meeting timeliness and dollar threshold requirements). See, e.g., *General Revenue Corp., et al.*, B-414220.2 *et al.*, Mar. 27, 2017, 2017 CPD ¶ 106; *Professional Analysis, Inc.*, B-410202, Aug. 25, 2014, 2014 CPD ¶ 247.

be debriefed and furnished the basis for the selection decision and contract award.

41 U.S.C. § 3704(a).

This provision, however, does not apply here because BPA is exempt from the applicable section of Title 41 of the U.S. Code. See 41 U.S.C. § 3101(c)(1)(B) (providing that the requirements of Section C, which includes 41 U.S.C. § 3704, do not apply when they are made inapplicable pursuant to law). As addressed above, BPA's organic statute expressly exempts application of federal procurement laws to BPA's contracting. Specifically, BPA's statute provides that:

*Subject only to the provisions of this chapter, the Administrator is authorized to enter into such contracts, agreements, and arrangements, including the amendment, modification, adjustment, or cancelation therefore . . . upon such terms and conditions and in such manner as he may deem necessary.*

16 U.S.C. § 832a(f) (emphasis added).

Thus, the statutory requirement for a post-award debriefing established by 41 U.S.C. § 3704 is inapplicable.<sup>8</sup>

Centerra does not identify any other statutes applicable to BPA that require BPA to provide post-award debriefings. Cf. *Professional Analysis, Inc., supra*, at 2-3 (addressing that our Office interprets the applicability of our timeliness regulations with respect to the scope of statutorily required debriefings). Rather, the sole basis for the protester's argument that the debriefing should be considered a "required" debriefing rests on the debriefing provisions set forth in the BPI.<sup>9</sup> These provisions, however,

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<sup>8</sup> Although not at issue in this protest, our decision would apply equally as to the statutory requirements for pre-award debriefings established by 41 U.S.C. § 3705.

<sup>9</sup> In relevant part, the BPI provides that:

Debriefings are an important method of helping offerors to understand the basis for Bonneville's decisions. Developing good long-term relationships with contractors includes treating offerors who are not selected for award with respect, and with the knowledge that they may become an important supplier at some future date. In this sense, debriefings should be considered to be more a [contracting officer's] "obligation" than an offeror's "right." Debriefings shall be considered to be negotiations which will, in part, determine Bonneville's future supplier base. For this reason they shall receive commensurate preparation.

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reflect BPI's policy versus a procurement statute or regulation, and are therefore insufficient to establish the debriefing at issue as a "required" debriefing within the meaning of our Bid Protest Regulations. Absent any applicable statutory or regulatory requirement for the post-award debriefing provided to Centerra, the debriefing exception to our timeliness rules does not apply.

Our conclusion that the information provided to Centerra was not provided pursuant to a "required debriefing" within the meaning of the debriefing exception does not end our timeliness inquiry, however. Even if a disappointed offeror does not secure a required debriefing, it may file a protest within 10 calendar days after it learns, or should have learned, the basis for protest, provided it has diligently pursued the matter. Accordingly, a disappointed offeror may file a timely protest based on information obtained during a debriefing that was not required. See 4 C.F.R. § 21.2(a)(2); *Raith Eng'g and Mfg. Co., W.L.L.*, B-298333.3, Jan. 9, 2007, 2007 CPD ¶ 9 at 3.

Here, the agency concedes that Centerra could not have known its bases for protest until it received the agency's March 19 letter with the agency's evaluation findings. See Req. for Dismissal at 6 ("Protester was also made aware of the more specific bases for its protest grounds on March 19, 2020, when it received its initial debriefing letter containing its strengths, weaknesses, and deficiencies."). Thus, any protest based on the information first learned by Centerra when it received its March 19 written debriefing would have been timely had they been filed within 10 days, or by no later than March 30. Centerra did not, however, file its protest until Wednesday, April 1.

The protester asserts that its protest was timely nonetheless because it was filed within 10 days of when BPA responded to the protester's questions following receipt of the written debriefing. While it is true that BPA provided Centerra the opportunity to ask questions following the written debriefing and represented that the debriefing would not be concluded until BPA responded to the protester's questions, we disagree that BPA's voluntary provision of additional information tolled the 10 day filing deadline under 4 C.F.R. § 21.2(a)(2).

When considering the timeliness of a protest in the context of a "required debriefing," in several cases we have found that a debriefing was not concluded, and, therefore, the filing deadline under the debriefing exception was tolled, because the procuring agency had a legal obligation to address a party's questions, voluntarily agreed to continue a required debriefing to address an offeror's questions, or introduced ambiguity with respect to whether a debriefing had concluded. See, e.g., *State Women Corp.*, B-416510, July 12, 2018, 2018 CPD ¶ 240 (addressing the Army's obligations pursuant

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To the maximum extent practicable, the [contracting officer] shall debrief unsuccessful offerors within ten calendar days of receipt of offeror's debriefing request. Unsuccessful offerors must request a debriefing within three calendar days of receipt of award notice.

BPI, ¶¶ 12.8.3, 12.8.3.1(a).

to Department of Defense Class Deviation 2018-00011 – Enhanced Post Award Debrief Rights); *Harris IT Servs. Corp.*, B-406067, Jan. 27, 2012, 2012 CPD ¶ 57 (finding that debriefing was extended where the agency addressed additional questions without indicating that it believed the debriefing to be concluded).

These cases, however, all concern timeliness of a protest with respect to a statutorily required debriefing. The statutory and regulatory framework establishing the requirement for a debriefing expressly contemplates that an agency will answer an offeror's relevant questions. See 41 U.S.C. § 3704(c)(6) (requiring post-award debriefings to include "reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency"); FAR 15.506(d)(6) (same, with respect to "[r]easonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed"). These requirements are consistent with the overall congressional intent that offerors receive statutorily required debriefings before deciding whether or not to file a protest, to address concerns regarding strategic or defensive protests, and to encourage early and meaningful debriefings. *Professional Analysis, Inc.*, *supra*, at 2.

Here, however, for the reasons set forth above, the agency did not provide a statutorily required debriefing, and the debriefing exception rules set forth in our Regulations do not apply when considering the timeliness of Centerra's protest. Absent a statutorily required debriefing, with its statutorily contemplated question and answer procedures, the agency's provision of further information in response to questions raised by Centerra could not toll the filing deadline established by 4 C.F.R. § 21.2(a)(2). Thus, Centerra had to file its protest when it first learned of the basis for its challenges from the March 19 written debriefing.

We have recognized that a firm may not delay filing a protest until it is certain that it is in a position to detail all of the possible separate grounds of protest. *CDO Techs., Inc.*, B-416989, Nov. 1, 2018, 2018 CPD ¶ 370 at 5; *Litton Sys., Inc., Data Sys. Div.*, B-262099, Nov. 17, 1995, 95-2 CPD ¶ 215 at 5 n.5. At best, any new information learned as a result of BPA's responses to Centerra's additional questions would have started a new 10 day filing deadline for any protest grounds based on the newly learned information; it could not, however, extend the filing deadline for information first disclosed or learned as a result of the initial written debriefing.<sup>10</sup> Therefore, because

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<sup>10</sup> BPA's responses provided additional clarification with respect to two of the several weaknesses and deficiencies identified during the initial written debriefing and that were subsequently challenged by Centerra. See Request for Dismissal, exh. B.1, Response to Centerra Debriefing Questions at 11. To the extent BPA's supplemental clarifications may have provided further support for these bases of protest, Centerra nevertheless knew or reasonably should have known of its bases for protest based on the written March 19 debriefing, which disclosed the assessed weaknesses. Thus, Centerra's April 1 challenges to these assessed weaknesses were untimely.



Centerra filed its protest more than 10 days after it first learned of its bases of protest from its non-required written debriefing, the protest is untimely.

The protest is dismissed.

Thomas H. Armstrong  
General Counsel