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Decision

Matter of: Alpine Companies, Inc.

File: B-419831; B-419831.2; B-419831.3; B-419831.5; B-419831.6

Date: June 8, 2021

Jerry A. Miles, Esq., and Arti Kane, Esq., Deale Services, LLC, for the protester. James A. Tucker, Esq., Damien C. Specht, Esq., and David Allman, Esq., Morrison & Foerster LLP, for Information Systems and Networks Corporation, the intervenor. Julie Cannatti, Esq., Justin Haselden, Esq., and Julie Holvik, Esq., Department of Housing and Urban Development, for the agency. Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency was required to seek clarification before rejecting the protester's proposal as technically unacceptable is dismissed where the protester's proposal took exception to material terms of the solicitation on its face, and the agency was under no obligation to seek clarifications.
 2. Protester is not an interested party to challenge other aspects of the agency's evaluation of the protester's proposal where the protester's proposal contains deficiencies that render it ineligible for award.
 3. Protest alleging Procurement Integrity Act violation is dismissed when the protester contacted the agency within 14 days of when the protester learned of the alleged violation, but declined to provide the information that the protester believed constituted evidence of the offense to the agency.
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DECISION

Alpine Companies, Inc., a woman-owned small business of Alpine, Utah, protests the award of a contract to Information Systems and Networks Corp. (ISN), of Bethesda, Maryland, under solicitation No. 86614920R0005, issued by the Department of Housing and Urban Development (HUD) for loan servicing support services. The protester argues the agency erred in evaluating both its and the awardee's proposals.

We dismiss the protest.

BACKGROUND

The agency issued the solicitation on August 6, 2020 seeking professional support services for servicing various loans held by the Secretary of HUD (called the “Secretary Held” loan servicing program). Request to Dismiss at 2. On February 3, 2021, the protester sent an email to the agency expressing concerns about rumors the protester had heard. Email from Alpine to Contracting Officer, Feb. 3, 2021, at 2-3. Specifically, the email explained the protester had “been advised” a company, believed to be ISN, was claiming to be the awardee of this procurement. *Id.* Additionally, the protester noted it had also heard ISN was holding itself out as the awardee in contract negotiations with the incumbent contractor’s staff, and with the landlord of the incumbent contract workspace. *Id.* Finally, the protester expressed concern that “[w]e have been advised by several members within HUD that the evaluation of our Team Members was not based on the qualification of the company, and that there are concerns in HUD with my selected team members.” *Id.*

On February 4, the contracting officer responded, explaining no award had been made and the protester’s proposal was still under consideration. Email from Contracting Officer to Alpine, Feb 4, 2021 at 1. Additionally, the contracting officer indicated the protester’s allegations “may rise to the level of Procurement Integrity Act violations” and the contracting officer intended to investigate. *Id.* However, the contracting officer noted he may need to contact Alpine for more information. *Id.*

On March 10, the contracting officer sent a letter to the protester asking several clarifying questions about the protester’s allegations. Letter from Contracting Officer to Alpine, March 10, 2021 at 1. For example, the protester’s email noted the protester had “hear[d]” or “been advised” of certain things, but did not indicate precisely what had been said, by whom, or when. Email from Alpine to Contracting Officer, Feb. 3, 2021, at 2-3. Among other questions, the contracting officer asked the protester to indicate who had told the protester the information supporting the allegations so the contracting officer could investigate. Letter from Contracting Officer to Alpine, March 10, 2021 at 1. Of note, the contracting officer did not ask the protester to investigate or develop any additional information, but rather only asked for sources or a clearer statement of information the protester already conveyed. *Id.*

On March 16, the protester replied in relevant part:

None of the employees are interested in providing more information with regards to staff that work for HUD that have said things, staff that work for [the incumbent contractor and its subcontractor]. Mainly for fear of losing their jobs or not having an opportunity to work for the new contractor (whomever that is).

So, I guess I'll have to drop this issue, and will leave it at that. I'm not interested in pursuing anything against HUD regarding this issue that I brought up. I was just asking for a fair evaluation.

[. . .]

I couldn't just be silent and I'm quite sure if the information I got is valid, that I needed to mention it. I wasn't digging into anything, I just received several calls out of the blue with this info and it was quite concerning.

We will just move forward and aren't pressing the issue. I don't have anything else to provide.

Email from Alpine to Contracting Officer, March 16, 2021.

On May 3, 2021, HUD posted a notice of award to ISN in the amount of \$54,896,968.29. Request to Dismiss at 3. HUD also provided a debriefing to Alpine, noting Alpine's technical approach contained numerous deficiencies, among other things. *Id.* This protest followed.

DISCUSSION

Alpine argues the agency erred in finding its proposal technically unacceptable, erred in assigning the awardee a neutral past performance rating, and failed to adequately investigate the protester's concerns about procurement integrity.¹ First Supp. Protest at 21-61.

Protester's Evaluation

Turning first to the protester's challenges to the evaluation of its proposal, we conclude the protester's proposal is technically unacceptable on its face, and therefore the protester is not an interested party to contest the remainder of its challenges to its own evaluation.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *RELM Wireless Corp.*, B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2.

¹ The protester additionally alleges the agency impermissibly closed the protester's debriefing without answering its questions. First Supp. Protest at 54-59. Issues concerning the adequacy of a debriefing are not issues our Office will consider. See, e.g., *CAMRIS Int'l, Inc.*, B-416561, Aug. 14, 2018, 2018 CPD ¶ 285 at 5. This protest ground is accordingly dismissed.

A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. *Id.*

Here, the protester challenges the agency's technical evaluation of its proposal in numerous respects. See First Supp. Protest at 21-53. The record, however, reflects that the protester's proposal was found technically deficient in at least two respects and these deficiencies are evident on the face of the protester's proposal.² *Id.* at 41. Specifically, the protester concedes the solicitation required offerors to prepare, execute and record certain paperwork within 10 business days of a triggering event, but Alpine's proposal indicated it would perform that task within 15 business days instead. *Id.* Similarly, the protester acknowledges that the solicitation required offerors to distribute reimbursement request letters within 5 days, but the protester proposed 7 days for that task. *Id.*

The protester does not contest its proposal failed to meet these solicitation requirements, but argues, in the alternative, that either these provisions are not material requirements of the solicitation, or the non-compliances represent minor informalities or clerical errors, which could have been resolved through clarifications. *Id.*

We do not agree. In this case, the solicitation provides clear timetables for specific deliverables, which the protester's proposal explicitly does not meet. Our decisions have consistently concluded clearly stated solicitation requirements are material to the needs of the government, and a proposal that fails to conform to such material terms is unacceptable, and may not form the basis for award. See, e.g., *Leader Communications, Inc.*, B-413104.9, Mar. 17, 2017, 2017 CPD ¶ 96 at 5. The deliverable timelines were material requirements of the solicitation, and the protester's proposal clearly took exception to them.

Additionally, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements, and an offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. *International Med. Corps*, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8; *STG, Inc.*, B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 5-6. Even assuming, for the sake of argument, that these features of the protester's proposal were minor informalities or clerical errors, which could have been resolved through clarifications, our decisions have repeatedly

² Collaterally, the protester argues its technical proposal is necessarily acceptable because its price was competitive. See, e.g., First Supp. Protest at 22 (asserting if the "price fits, the technical approach must be legit."). Our decisions have generally rejected arguments that a competitive price has any bearing on the evaluation of a technically unacceptable proposal. See, e.g., *LifeCare, Inc.*, B-291672, B-291672.2, Feb. 20, 2003, 2003 CPD ¶ 95 at 7 ("A technically unacceptable proposal cannot be considered for award; accordingly, any purported cost savings flowing from the offeror's stated price regarding its technically unacceptable proposal are irrelevant."). Accordingly, we dismiss this argument as legally insufficient.

concluded agencies may, but are not required to, engage in clarifications. See, e.g., *Valkyrie Enterprises, LLC*, B-414516, June 30, 2017, 2017 CPD ¶ 212 at 5; *Alltech Engineering Corp.*, B-414002.2, Feb. 6, 2017, 2017 CPD ¶ 49 at 6; *Satellite Servs., Inc.*, B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. Here, the agency was under no obligation to seek clarification from the protester.

The protester's proposal is technically unacceptable on its face, and therefore unawardable. Accordingly, the protester is not an interested party to challenge the remainder of the evaluation of its proposal. See *Arc Aspicio, LLC et al.*, B-412612 *et al.*, Apr. 11, 2016, 2016 CPD ¶ 117 at 12-13 (dismissing protest where protester challenged only two of its four deficiencies and thus would not be eligible for award even if there were merit in the protest grounds it did raise).

However, the protester has also challenged the acceptability of ISN's proposal and the propriety of the award to ISN. Because ISN was the only acceptable offeror in this procurement, the protester is an interested party to pursue those protest grounds.

Other Challenges

Concerning the awardee's proposal, the protester alleges the awardee lacked any relevant past performance and the agency should have found the awardee unacceptable on that basis. First Supp. Protest at 48-49. The protester also alleges the agency failed to adequately investigate the protester's procurement integrity concerns, and that the award to ISN was improper. *Id.* at 17-21.

With regard to the protester's past performance argument, its contention that the awardee was unacceptable because it lacked relevant past performance reflects a misunderstanding of the requirements of the Federal Acquisition Regulation (FAR). FAR 15.305(a)(2)(iv) provides "[i]n the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance." Moreover, we have specifically concluded it is inappropriate for agencies to exclude offerors from a competition on the basis of a lack of relevant past performance. *Xtreme Concepts Inc.*, B-413711, Dec. 19, 2016, 2016 CPD ¶ 372 at 5. Here, the agency correctly assigned the awardee a neutral rating for past performance, consistent with the FAR's requirements. Accordingly, this protest ground fails to allege a violation of procurement law or regulation, and is dismissed as legally insufficient. 4 C.F.R. § 21.5(f).

Turning to the protester's procurement integrity allegations, the procurement integrity provisions of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. §§ 2101-2107, known as the Procurement Integrity Act (PIA), provide, among other things, that a federal government official "shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." 41 U.S.C. § 2102(a)(1).

Further, the PIA requires firms to provide notice of alleged violations to the agency prior to filing a protest with our Office, as follows:

A person may not file a protest against the award or proposed award of a Federal agency procurement contract alleging a violation of section 2102, 2103, or 2104 of this title, and the Comptroller General may not consider that allegation in deciding a protest, unless the person, no later than 14 days after the person first discovered the possible violation, reported to the Federal agency responsible for the procurement the information that the person believed constitutes evidence of the offense.

41 U.S.C. § 2106.

Our Bid Protest Regulations state we will dismiss any protest alleging a violation of the PIA, 41 U.S.C. §§ 2102, 2103, or 2104, where the protester “failed to report the information it believed constituted evidence of the offense to the Federal agency responsible for the procurement within 14 days after the protester first discovered the possible violation.” 4 C.F.R. § 21.5(d). If the protester disagrees with the agency’s response to a timely notice of a PIA allegation, the protester must file a protest with our Office within 10 days. *Systematic Mgmt. Servs., Inc.*, B-250173, Jan. 14, 1993, 93-1 CPD ¶ 41 at 8; see 4 C.F.R. § 21.2(a)(2).

Here the protester alleges it learned of the facts supporting its allegations on January 27, 2021, and, on February 3, the protester sent its letter to the agency. Alpine Declaration at 1. However, the protester’s allegations in February were vague, and did not credibly allege a violation of the PIA. Principally, the protester alleged an unnamed person or persons told them ISN was representing it had already won the award. Email from Alpine to Contracting Officer, Feb. 3, 2021, at 2-3. Notably, the letter did not allege any agency official had knowingly disclosed contractor bid or proposal information or source selection information, or that anyone had knowingly obtained such information inappropriately. *Id.*

Regardless, the agency took the protester’s concerns seriously, and attempted to investigate. See Letter from Contracting Officer to Alpine, March 10, 2021 at 1. The contracting officer asked clarifying questions that would allow the agency to substantiate and better understand the protester’s concerns. *Id.* However, despite the fact the protester had in its possession all the information the agency requested,³ the protester

³ Contrary to the protester’s repeated suggestion, the agency did not ask the protester to conduct a PIA investigation on its behalf. Rather, the agency asked the protester to explain in more detail what the protester had allegedly heard, and to indicate who the protester had heard it from. Letter from Contracting Officer to Alpine, March 10, 2021 at 1. That is to say, the agency only requested details concerning the information that formed the basis of the protester’s allegations, which the protester already knew. *Id.*

declined to provide any further information (other than indicating some of Alpine's sources worked for the incumbent contractor or its subcontractor). Email from Alpine to Contracting Officer, March 16, 2021. More significantly, the protester specifically indicated it was not interested in pursuing the allegations any further and had no further information to offer.⁴ *Id.*

On these facts, the protester did not meet the timeliness requirements of the PIA and our regulations. That is to say, while the protester expressed concerns, the protester did not report the information it believed constituted evidence of a violation of the PIA to the federal agency responsible for the procurement within 14 days. See, e.g., *Raytheon Company*, B-416211 *et al.*, July 10, 2018, 2018 CPD ¶ 262 at 6.

Moreover, even assuming the protester's initial communication satisfied our timeliness requirements, the communication did not credibly allege a violation of the PIA and therefore the allegation is also legally insufficient. Here, the protester's procurement integrity allegations amount to anonymous reports that ISN, a private party, was representing itself as the apparent awardee in negotiations with other private parties.⁵ Email from Alpine to Contracting Officer, Feb. 3, 2021, at 2-3. However, such allegations, even if true, do not establish a PIA violation because they do not establish

The protester declined to provide this information. Email from Alpine to Contracting Officer, March 16, 2021

⁴ The protester now alleges Alpine feared unspecified retaliation from the government if it provided the information the contracting officer requested. Alpine Declaration at 2-3. However, the protester provides no facts in support of this claim, but rather simply asserts it feared and still fears it will be "tacitly blacklisted" for pursuing this claim. *Id.* Here, the contemporaneous correspondence shows the contracting officer took the protester's allegations seriously and attempted to investigate. We note it was the protester, not the agency, which indicated it had no interest in pursuing the allegations further. More significantly, the statutory and regulatory timeliness rules concerning protests of PIA violations do not contemplate exceptions. If a protester seeks to pursue a protest of a violation of the PIA at our Office, the protester must "report the information it believed constituted evidence of the offense to the Federal agency responsible for the procurement within 14 days after the protester first discovered the possible violation." 4 C.F.R. § 21.5(d).

⁵ The protester also made a vague allegation concerning the evaluation of one of its subcontractors. Email from Alpine to Contracting Officer, Feb. 3, 2021. Specifically, the protester alleged "[w]e have been advised by several members within HUD that the evaluation of our Team Members was not based on the qualification of the company, and that there are concerns in HUD with my selected team members." *Id.* However, this allegation does not identify any specific officials nor does it clearly suggest the agency impermissibly disclosed procurement sensitive information or source selection information. At best, the allegation can be read as suggesting unidentified agency officials prematurely communicated with Alpine about its own proposal, which cannot have competitively prejudiced the protester.

any agency misconduct. See *Mitchco International, Inc.*, B-418481.3; B-418481.4, June 9, 2020, 2020 CPD ¶ 210 at 6 (dismissing a protest alleging a violation of the PIA where “the protester fails to make any credible allegation of government misconduct, or misconduct by a person who was acting for or on behalf of the government.”). That is to say, even if ISN held itself out as the apparent awardee in negotiations, that does not necessarily imply the agency improperly advised ISN of any source selection information--ISN may have been boasting, employing a negotiating tactic, or simply mistaken. Crucially, Alpine made no allegations and provided no information linking ISN's purported actions to any agency misconduct, and Alpine specifically declined to provide supporting information that would have permitted the agency to investigate further. Email from Alpine to Contracting Officer, March 16, 2021.

Finally, while the protester has attempted to supplement its initial PIA allegations in the present protest, we note such allegations are plainly untimely because they were not raised with the agency within 14 days of when the protester learned of them. See Alpine Declaration at 1-2; 4 C.F.R. § 21.5(d).

The protest is dismissed.

Thomas H. Armstrong
General Counsel