



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** C.L.R. Development Group

**File:** B-409398

**Date:** April 11, 2014

---

Garrett C. Forester, and J. Scott Hunt, C.L.R. Development Group, for the protester. Brian R. Reed, Esq., Department of Veterans Affairs, for the agency. Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

1. Protest allegations challenging various amendments to the solicitation, the solicitation's award criteria, the conduct of discussions, the evaluation of the awardee's location and road access, and the evaluation of the protester's own past performance are dismissed where the protester did not timely raise these issues in an initial agency protest, or its subsequent protest filed with our Office.
2. Allegation that the agency miscalculated protester's proposal and made a flawed best value award decision is denied where the agency's final evaluation was reasonable and consistent with the solicitation and where the tradeoff decision was premised on aspects of the evaluation that protester did not otherwise timely challenge.
3. Protest that the awardee's proposal was unacceptable because the awardee was not registered in the System for Award Management at the time proposals were due, as required by the solicitation, is denied where the awardee was registered at the time of award, as provided for by the Federal Acquisition Regulation, and there is no basis to conclude that the protester was prejudiced by the agency's apparent waiver of the registration provision.

---

### DECISION

C.L.R. Development Group (CLR), of St. Charles, Illinois, protests the award of a lease to Charles Miller Road, LLC, of Kenosha, Wisconsin, by the Department of Veterans Affairs (VA), under request for lease proposal (RLP) No. VA69D-12-R-0754, for a community-based outpatient center in McHenry, Illinois.

The protester challenges various aspects of the solicitation terms, the agency's evaluation, and source selection decision.

We dismiss the protest in part and deny it in part.

## BACKGROUND

The VA currently leases a building for use as a community-based outpatient center in McHenry, Illinois. With the current lease nearing the end of its term, the VA issued the RLP on May 2, 2013, seeking 9,000 to 10,000 rentable square feet of medical office space in the area of the current outpatient center. The RLP, as amended, provided that the VA would award the lease on a best value basis considering three technical factors and price. The technical factors, listed in descending order of importance were:

1. Location: ease of access, proximity to commercial amenities, pedestrian safety.
2. Design: patient flow, use of natural lighting, use of LEED.
3. Past Performance.

RLP, Amendment 6, at 1.

The VA received five proposals in response to the RLP, which were evaluated by an agency source selection team (SST). Following the initial evaluation, the contracting officer established a competitive range consisting of all offerors. On July 12, CLR received notice that its proposal was within the competitive range, but that its proposed rental rate needed to be reduced. CLR Competitive Range Notice, at 1.

On July 30, the contracting officer for this procurement left his position.<sup>1</sup> At that time, the contracting officer's supervisor reassigned the procurement to himself, and notified CLR that he would be completing the acquisition.

After reviewing the SST's evaluation, the new contracting officer sent each offeror a discussion letter describing significant weaknesses identified by the SST, and scheduled a 30-minute teleconference for oral discussions. After discussions, the VA requested final proposal revisions (FPR), which were timely received from three of the five offerors in the competitive range, including CLR.

---

<sup>1</sup> This was, in fact, the second contracting officer to leave this procurement. The acquisition had been previously reassigned from the original contracting officer due to other acquisition needs. Source Selection Decision (SSD) at 3.

The SST's and contracting officer's evaluation of the FPRs resulted in the following consensus ratings:

Evaluation Factor	CLR	Charles Miller	Offeror 3
Location	Satisfactory	Excellent	Satisfactory
Design	Marginal	Excellent	Satisfactory
Past Performance	Marginal	Excellent	Excellent
Overall	Marginal	Excellent	Good
Price per sq. ft.	\$36.42	\$41.10	\$65.88

Agency Report at 5.

In making the award decision, the contracting officer recognized that CLR had offered the lowest evaluated price per square foot, but was particularly concerned about CLR's marginal past performance rating, and the location of CLR's building, which, according to the evaluation, was not visible from the main access road and thus could be difficult for patients to locate. SSD at 10, 13-14. In contrast, the contracting officer found that Charles Miller had "clearly favorable" past performance, and had been very responsive to the agency's discussion concerns, resulting in excellent ratings for its FPR. Id. at 14. Specifically, Charles Miller had agreed to relocate its proposed new construction facility to a different area of the build site and to open a second entrance from a less traveled, potentially safer road. Charles Miller also offered design drawings demonstrating its ability to suit the agency's desired floorplan, and offered LEED certification. Id.

In the tradeoff decision, the contracting officer concluded that "paying the slight premium over the lowest-priced (PVA) offer is a fair trade for the technical merits of Charles Miller Road, LLC's proposal because the proposal offered excellent location, design and past performance." SSD at 15. The agency issued notice of award to Charles Miller on September 12, 2013.<sup>2</sup> The agency also provided CLR with a debriefing on September 19.

In response, CLR filed an agency-level protest with the VA on September 20, alleging that the evaluation of its proposal under the location and design factors was incorrect, that the award criteria set forth in the RLP were flawed, and that the awardee was not properly registered in the System for Award Management (SAM) as required by the RLP.<sup>3</sup> CLR additionally levied numerous allegations of bad faith

<sup>2</sup> Although the award notice was dated July 12, 2013, the record is clear that the award notice was issued on September 12.

<sup>3</sup> SAM is an Official U.S. Government system that has consolidated the capabilities of various previously existing registration systems, such as CCR/FedReg, ORCA, and EPLS.

against the contracting officer, contending abuse, malfeasance, and bias. Later, on October 15, CLR supplemented its agency-level protest with additional allegations that more specifically responded to the contents of its September 19 debriefing.

The VA issued its decision addressing CLR's agency-level protest on December 20, dismissing the protest in part and denying it in part. Specifically, the VA concluded that CLR's October 15 supplemental protest was untimely filed since CLR knew or should have known the bases for protest raised in the supplemental protest when it received its debriefing, but the supplemental protest allegations were filed more than 10 days after CLR received its debriefing. The agency dismissed CLR's challenges to the award criteria as untimely since they were not filed prior to the time set for receipt of proposals in response to the RLP. The VA also dismissed CLR's challenges to the evaluation of its own proposal as untimely, finding that the challenges were first raised with specificity in CLR's untimely October 15 supplemental protest. Finally, the VA denied CLR's protest as it concerned bad faith on the part of the contracting officer, finding that the claims were without merit, and denied CLR's protest concerning SAM registration, finding that the awardee's late registration was a minor informality that did not impact the acceptability of its proposal. CLR then filed its protest with our Office, alleging a wide variety of protest grounds relating to amendments to the solicitation, the conduct of the contracting officer, the evaluation of the proposals and of CLR's own past performance, among others.

## DISCUSSION

As an initial matter, the majority of the challenges presented in CLR's protest are untimely. In this regard, CLR's arguments were either not timely filed at the agency level, or were simply not presented in CLR's agency-level protest, and are therefore untimely when later filed at our Office.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on alleged improprieties in a solicitation must be filed prior to bid opening or the time established for receipt of proposals, 4 C.F.R. § 21.2(a)(1), and all other protests must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Further, a matter initially protested to the contracting agency will be considered timely by our Office only if the initial agency protest was filed within the time limits provide by the Regulations for filing a protest with our Office unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. 4 C.F.R. § 21.2(a)(3). Our timeliness rules reflect the dual requirements of giving

parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Dominion Aviation, Inc.--Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

Here, CLR's protest allegations concerning amendments to the RLP and the RLP award criteria are untimely since they concern apparent solicitation improprieties, yet they were not raised by CLR with the agency or our Office prior to the time set for receipt of proposals. Additionally, we dismiss CLR's challenges to the conduct of discussions, the evaluation of the awardee's location and road access, and the evaluation of CLR's own past performance. The bases for these grounds of protest were known to CLR at, or before, the time of CLR's September 19 debriefing, but they were not protested to the agency, or to our Office, within 10 days of the debriefing. Accordingly, CLR's only timely grounds of protest concern the evaluation of its proposal under the location and design evaluation factors, the best value award decision, bad faith by the contracting officer, and the awardee's registration in the SAM system.<sup>4</sup>

In reviewing an agency's evaluation of proposals and source selection decision, it is not our role to reevaluate submissions; rather, we examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. A protester's disagreement with the agency's evaluation judgments, or with the agency's determination as to the relative merits of competing proposals, does not establish that the evaluation or the source selection decision was unreasonable. Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7.

With regard to CLR's challenges to its own evaluation and to the source selection decision, our review of the record demonstrates that while the SST's underlying evaluation sheets may reveal certain inconsistencies with the agency's evaluation, the record shows that those errors were not carried forward by the contracting officer in the SSD, and did not impact the award decision.<sup>5</sup> Most importantly, the

---

<sup>4</sup> Although the agency apparently concluded that CLR did not sufficiently raise challenges to the evaluation of its proposal under the location and design factors in its initial agency-level protest, we conclude that CLR's initial agency level protest did present these issues, and we treat the issues as timely in CLR's protest at this Office.

<sup>5</sup> For example, one individual evaluator criticized CLR's proposed building because the building was not suitable for expansion, which was improper and not related to any evaluation criteria where CLR's building provided square footage within the range specified by the RLP. Another evaluator criticized CLR's parking as "tight," where CLR proposed more than twice the number of parking spaces required.

(continued...)

tradeoff decision hinged largely on aspects of the evaluation that CLR failed to timely challenge. Specifically, the contracting officer was principally concerned with CLR's marginal past performance rating, noting that CLR has had issues with "responsiveness to timely snow and ice removal, lighting issues, carpet replacement issues, and patient safety issues related to the building grounds." SSD at 14. In comparison, the contracting officer cited Charles Miller's favorable past performance, as well as the new construction nature of its building, its desirable design features, and its location with access points from both a major thoroughfare and a less-traveled, potentially safer road. Since CLR cannot now challenge Charles Miller's excellent ratings, or its own negative past performance information, we can find no error in the contracting officer's decision to pay a small premium in order to make award to the higher-rated Charles Miller proposal. CLR's timely filed allegations are simply insufficient to cast doubt on the agency's award decision.<sup>6</sup>

Turning to CLR's various allegations of bias or bad faith on the part of the contracting officer, such allegations must be supported by convincing proof; government officials are presumed to act in good faith and our Office will not attribute unfair or prejudicial motives to them on the basis of inference or supposition. PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 2.

---

(...continued)

However, in his independent evaluation and justification of the offerors' ratings in the SSD, the contracting officer did not incorporate any of the inconsistent evaluator findings. We conclude, on our review of the record, that the contracting officer's final evaluation of the proposals was reasonable and consistent with the RLP's evaluation criteria. The overriding concern for our purposes is not whether an agency's final evaluation conclusions are consistent with earlier evaluation conclusions (individual or group), but whether they are reasonable and consistent with the stated evaluation criteria, and reasonably reflect the relative merits of the proposals. See, e.g., URS Fed. Tech. Servs., Inc., B-405922.2, B-405922.3, May 9, 2012, 2012 CPD ¶ 155 at 9 (a consensus rating need not be the same as the rating initially assigned by the individual evaluators).

<sup>6</sup> CLR disputes its past performance evaluation and argues that its building design was equally appealing for the agency's needs. CLR also challenges the evaluation of Charles Miller's proposed location as excellent where it is located next to a funeral home--CLR believes this to be an inappropriate location for a community-based outpatient center offering mental health services--and asserts that Charles Miller will be unable to fulfill its promise of a second road access point. CLR, however, was aware of the basis of each of these grounds of protest by the time of its debriefing, but, as explained above, failed to timely raise these issues.

In this case, CLR asserts that, upon the change in contracting officers in this procurement, there was a “dramatic negative change in tone and attitude,” and that it had been warned that the agency wanted to award the lease to a Wisconsin firm. CLR believes that the ultimate contracting officer for this acquisition intentionally engineered various amendments to the RLP to prejudice CLR, incorrectly evaluated CLR’s proposal, and conducted fraudulent oral discussions.<sup>7</sup> Based on our review of the record, it is apparent that these assertions reflect little more than supposition and innuendo, and thus fall short of the evidence necessary to support a claim of bad faith or bias.

Finally, CLR alleges that the awardee should have been rejected as unacceptable because it was not registered in the SAM system as required by the RLP. Specifically, the RLP provided that:

The offeror must have an active registration in the System for Award Management (SAM) System (via the Internet at [HTTP://WWW.SAM.GOV](http://www.sam.gov)) prior to final proposal revisions.

RLP at 10. The VA responds that, although Charles Miller’s SAM registration was not active at the time of its FPR as contemplated by the RLP, it was registered prior to the time of award, consistent with Federal Acquisition Regulation (FAR) § 4.1102(a), which requires registration in the SAM system only prior to the time of award. Given that Charles Miller was properly registered at the time of the award, the VA contends that its failure to have an active registration prior to the time of its FPR was a minor informality that did not render Charles Miller’s proposal unacceptable, and that our Office should deny the protest on that basis.

We find no prejudicial error associated with the agency’s apparent waiver of the requirement for offerors to be registered in the SAM database at the time proposals were due. The awardee’s registration status did not implicate the terms of its proposal and was a matter that was clearly resolved prior to award as contemplated by the FAR. There is nothing to suggest that the protester would have in any way altered its proposal to its competitive advantage in response with the relaxed provision. See, e.g., Graves Construction, Inc., B-294032, June 29, 2004, 2004 CPD ¶ 135 at 3 (concerning CCR registration, prior to the SAM system--failure to register in the CCR database even until after the time of award does not prejudice a

protester because the FAR specifically provides that an agency may delay award until after the apparently successful offeror has registered in the CCR database); FAR § 4.1103(b)(1).

---

<sup>7</sup> We also note, again, that CLR did not timely challenge the conduct of discussions where it knew the basis for that ground of protest by the time of its debriefing, but did not file its protest with the agency or with our Office within the required time.

The protest is dismissed in part and denied in part.

Susan A. Poling  
General Counsel