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Decision

Matter of: Integrated Modern Engineering, LLC

File: B-420636

Date: June 29, 2022

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DIGEST

Protest filed after the closing date for receipt of proposals is dismissed as untimely where the protester challenges the ground rules for the demonstration phase of the evaluation that were established by the terms of the solicitation.

DECISION

Integrated Modern Engineering, LLC (IME), a small business of Washington, District of Columbia, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. W56KGY-22-R-0004, issued by the Department of the Army, Army Contracting Command--Aberdeen Proving Ground, for a commercial software solution for intelligence applications. IME challenges the agency's decision to eliminate its proposal from competition based on the evaluation of IME's performance in the phase one product demonstration.

We dismiss the protest.

BACKGROUND

The RFP was issued on October 29, 2021, seeking a commercial software solution for an intelligence application with interoperability, security, training, usability, and data management capabilities, referred to as "All Source II" or ASII, to support the Army's program manager for intelligence systems and analytics. Agency Report (AR),

Tab 03G, Conformed RFP at 1, 3.¹ The solicitation required the proposed software solution to “meet the capabilities called out in the Base Performance Requirement Document (Base PRD).” AR, Tab 03H, RFP attach. 0001, Statement of Work (SOW) at 5; see AR, Tab 03I, RFP attach. 0002, Base PRD. The RFP also required the provision of support and incidental services to satisfy the ASII requirements specified in the SOW. RFP at 3.

The solicitation contemplated the award of one indefinite-delivery, indefinite-quantity contract with an ordering period of 5 years and orders to be issued on a fixed-price basis. *Id.* Award would be made to the offeror whose proposal was most beneficial to the government as determined by a tradeoff considering the following four factors: (1) technical; (2) price; (3) past performance; and (4) small business plan. *Id.* at 76. The RFP stated that the technical factor was significantly more important than price. *Id.*

Evaluations under the technical factor required offerors to participate in two phases of product demonstrations, where each offeror would demonstrate the capabilities of its proposed product by accomplishing “[d]ata [t]hread” steps as defined in the “Product Demonstration Event Plan” (PDEP) for each phase. *Id.*; see AR, Tab 03L, RFP attach. 0005, Phase 1 PDEP; Tab 03M, RFP attach. 0006, Phase 2 PDEP. The RFP informed offerors that phase one product demonstrations would be evaluated on a “[g]o/[n]o-[g]o” basis. RFP at 76. An offeror that does not successfully complete all of the steps in the Phase I PDEP would be considered unsuccessful, rated “no-go,” would not be part of the competitive range, and would not be eligible for award. *Id.*

As relevant here, the RFP established that the agency would provide product demonstration sample data to offerors that requested it within 15 days of the issuance of the solicitation. *Id.* at 71. The RFP also provided a summary of the type of information that would be provided for the product demonstration. *Id.*; see AR, Tab 03N, RFP attach. 0007, Government Furnished Information. In addition, the RFP advised competitors that they had “the opportunity (but [] not a requirement) to participate in an open integration session prior to the execution of the product demonstrations.” RFP at 71. The solicitation explained that offerors may use the integration period to set up and configure their software solutions in the cloud and test connectivity to the agency’s test harness for intelligence applications. *Id.* The RFP also stated that this integration period would not be evaluated. *Id.*

Between November 16 and the RFP’s closing date of December 13 for receipt of proposals, IME sent numerous emails to the agency with questions about the solicitation and requests for additional solicitation documents, as well as sample data. Comments at 5-6; COS/MOL at 10-15; see AR, Tabs 05, 06, 08, 09, 10, 12, 13, 14,

¹ The solicitation was amended three times. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 10. All references to the RFP are to the conformed RFP provided by the agency at Tab 03G to the agency report. Citations to the agency report are to the Adobe PDF document pages.

Emails from IME to Army. The agency did not answer IME's questions because they were submitted after the RFP's deadline for the submission of questions.² COS/MOL at 10-15; see AR, Tabs 07, 11, Emails from Army to IME. The agency, however, provided the requested solicitation documents, including attachments containing sample data, through the Department of Defense (DOD) Secure Access File Exchange (SAFE). COS/MOL at 10-15; see AR, Tabs 29-34, DOD SAFE Drop-Off/Pick-Up Details.

By the December 13 closing date, the agency received proposals from three offerors, including IME. COS/MOL at 15. On December 15, the agency provided additional information to the three offerors about the phase one demonstration, including a logistics document for the integration sessions and product demonstrations. See AR, Tab 37, Phase 1 Demonstration Concept of Operations. The document provided for a planned period of integration when offerors would "install and configure their proposed solutions" on the government cloud. *Id.* at 4. It also informed offerors that they were permitted "[d]ry run opportunities with sample data threads" without government feedback. *Id.* at 2. On January 7, the agency revised the phase one PDEP to allow offerors the option to use their own cloud environment for the demonstration. COS/MOL at 16; see AR, Tab 20, Email to Offerors, Jan. 7, 2022. IME ultimately chose to use its own cloud environment for its demonstration. AR, Tab 41, IME Phase 1 Technical Evaluation Report at 2.

The agency initially scheduled IME's phase one demonstration for January 10, but rescheduled it for January 19 at IME's request. See AR, Tab 18, Email from IME to Contracting Officer (CO), Jan. 5, 2022; Tab 19, Email from CO to IME, Jan. 5, 2022. On January 14, IME requested an additional 2-week extension to "fully test[]" its solution and "ensure all features are complete and stable," citing, among other things, "some infrastructure issues that have put [it] behind" and other "clients[]" feature requests" as reasons for the delay. See AR, Tab 23, Email from IME to CO, Jan. 14, 2022 at 1. The agency denied the request. COS/MOL at 18; see AR, Tab 24, Email from CO to IME, Jan. 14, 2022 at 1.

On January 19, the scheduled date of IME's product demonstration, IME was unable to connect to the cloud server required to conduct the demonstration. *Id.* at 21. The agency paused the demonstration in order to correct the connectivity issue. *Id.* On January 20, after correcting the connectivity issue, and determining that the issue

² The initial deadline for questions about the solicitation was November 8, 2021. AR, Tab 36, SAM.gov Posting at 2. When the agency posted the first amendment to the solicitation on November 10, it also extended the deadline for questions to the close of business (established as 5:00 p.m. Eastern Time (ET)) on November 16. *Id.* IME's first email to the Army, received after the close of business (at 5:47 p.m. ET) on November 16, requested additional solicitation documents; it did not include any questions. AR, Tab 04, Email from IME to Army, Nov. 16, 2021 at 1. IME subsequently submitted questions about the solicitation on November 24 and 29. AR, Tab 09, Email from IME to Army, Nov. 24, 2021 at 1; AR, Tab 14, Email from IME to Army, Nov. 29, 2021 at 1-2.

was not caused by IME, the agency informed IME that its phase one demonstration would resume on January 21, the following business day. *Id.* IME again requested an additional extension; the agency denied the request. *Id.* at 22.

On the day of IME's phase one product demonstration, IME completed only two of the eleven data thread steps described in the Phase 1 PDEP. AR, Tab 41, IME Technical Evaluation Report at 1-7. As a result, the agency assigned IME a rating of "no-go" for its phase one product demonstration, rendering IME ineligible to move on to phase two. *Id.*

On February 14, the Army notified IME that it had been excluded from the competition. After requesting and receiving a debriefing, IME filed this protest with our Office.

DISCUSSION

IME challenges the agency's decision to reject its proposal based on the result of IME's phase one product demonstrations. Conceding that it was not able to complete all of the required steps described in the Phase 1 PDEP, the protester alleges that the agency's failure to provide timely access to the required data in the right format prevented IME from successfully completing the threads. Protest at 2-3. The protester also "believes" that other offerors had access to the data "in multiple formats due to existing contracts with the government" and were afforded more time to "access and integrate the necessary data" prior to the demonstration.³ *Id.*

Specifically, IME argues that the agency unreasonably provided the sample and demonstration data only in the Extensible Markup Language (XML) file format, rather than in the Microsoft Excel or JavaScript Object Notation (JSON) file format as IME requested. Protest at 2. In this regard, the protester alleges that XML format is an "outdated data format[]" and that IME would have been able to complete all of the required steps during the demonstration if the agency had provided the data in the

³ IME also raises various collateral arguments. Although we do not address every argument, we have considered them all and find that none provide a basis on which to sustain the protest. For example, the protester contends that the agency's failure to provide timely responses to its numerous inquiries and questions about the solicitation "disadvantaged IME in its efforts to respond to the Solicitation." Protest at 3; Comments at 5-6. A majority of the alleged instances of the agency's failure to respond, however, occurred prior to the closing date for proposal submission, and all of them occurred prior to IME's product demonstrations on January 21. See Comments at 5-6. The protester's allegations, raised more than two months later, constitute an untimely challenge under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1); see *Armorworks Enterprises, LLC*, B-400394, B-400394.2, Sept. 23, 2008, 2008 CPD ¶ 176 at 6-7 (dismissing as untimely challenges to an alleged impropriety with the fundamental ground rules of the procurement that became apparent to the protester before its elimination from the competition, where the protester did not raise such challenges within 10 days of becoming aware of the alleged impropriety).

JSON format as IME had requested. *Id.*; Comments at 7. Based on this allegation, the protester argues that the agency's evaluation of its product demonstration was unreasonable and unfair as the agency "placed undue weight on the backwards compatibility of the proposed solution by focusing on outdated data formats." Comments at 6-7.

The protester also contends that the agency provided the protester with insufficient time to "ingest," *i.e.*, access and integrate, the data in advance of the product demonstration. Protest at 2-3. The protester alleges that the agency delayed providing access of the required data to IME ahead of the scheduled demonstrations. *Id.* The protester further claims that, because the agency used outdated data formats, IME required additional days for its product to ingest the data in order to perform during the demonstration. *Id.*

In response, the agency requests that we dismiss IME's protest in its entirety, arguing that it raises untimely challenges to the ground rules of the competition, *i.e.*, the conditions for product demonstrations, which were clearly set out in the solicitation and communicated to potential offerors prior to the date of the demonstrations. Req. for Dismissal at 19-23. The agency contends that the protester was required to bring such challenges before the closing date for receipt of proposals. *Id.* We agree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These 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. *Red Heritage Medical, Inc.*, B-418934, Oct. 19, 2020, 2020 CPD ¶ 348 at 2; *Armorworks Enterprises, LLC*, *supra* at 5. Under these rules, a protest based on alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1); see *American Sys. Grp.*, B-418535, June 9, 2020, 2020 CPD ¶ 190 at 3.

Here, the solicitation clearly identified XML as the format in which the data for the phase one product demonstration would be provided. See AR, Tab 03N, RFP attach. 0007, Government Furnished Information, Structure of a VCAB at D-2. The agency further explains that, even though IME might consider XML to be an outdated data format, it is the data format that is currently compatible with the agency's existing systems, and the capability to be "backwards compatible" reflects the agency's actual needs in working with its legacy systems. COS/MOL at 9-10; see AR, Tab 51, Source Selection Evaluation Board Rebuttal at 21.

Moreover, while the solicitation made sample data available to offerors in advance upon request, it also made clear that the actual data to be used for the product demonstration would be provided on the day of the scheduled demonstration, and that the agency would allot the first hour for data integration and ingestion. See AR, Tab 03L, RFP attach. 0005, Phase I PDEP at 2, 9. Although the solicitation provided an optional integration period, it was to be used for the offerors to install and configure their proposed software solutions, not to access demonstration data in advance of the demonstration. RFP at 71. The agency further explains that the demonstration data

was to be provided on the day of demonstration--not in advance--so that the offeror could demonstrate the capability of its software product to “ingest and parse” new data within the first hour of the seven-hour demonstration in order to “emulate a real, operational battlefield situation requiring real time decision making.” COS/MOL at 22; see AR, Tab 46, Contracting Officer’s Declaration at 3-4.

In short, the record here shows that both the format of the data to be provided and the amount of time to be allotted for ingestion of such data for the product demonstration portion of the evaluation were part of the ground rules established by the terms of the solicitation. While the protester now contends that the data formats provided were outdated and that IME needed additional time for its proposed solution to ingest such outdated data, it was incumbent upon IME to raise these issues before the closing time for receipt of proposals since the alleged problems were apparent from the face of the solicitation. See *Armorworks Enterprises, LLC, supra*. Accordingly, we dismiss these protest grounds as untimely.⁴

The protester also alleges that other offerors had access to the data in different formats than those provided to IME and were provided “significantly longer time periods in which to access and integrate the necessary data.” Protest at 2-3. The protester, however, offers no facts to support its allegations other than its speculation and “belief” that unnamed, “other competing vendors” had greater access to the data through their prior contracts with the agency. *Id.* at 3. These allegations fail to satisfy our bid protest requirement that protesters include a detailed statement of the legal and factual grounds for protest. 4 C.F.R. §§ 21.1(c)(4). Our Office will not find improper agency action based on conjecture or inference. See *Raytheon Blackbird Techs., Inc.*, B-417522,

⁴ In its initial protest filing, IME does not challenge any of the agency’s specific evaluation findings of IME’s phase one product demonstration. Instead, IME bases its protest on the alleged failure by the agency to provide IME with equal and timely access to a particular format of data. See *generally*, Protest. In its response to the agency’s request for dismissal, however, the protester for the first time expresses its disagreement with specific evaluation findings about IME’s product demonstration. Resp. to Req. for Dismissal at 4. In support of its arguments, the protester also provides a “document which goes through the debriefing presentation with a point-by-point technical rebuttal”--again, for the first time in its response to the agency’s request for dismissal. *Id.*; see Resp. to Req. for Dismissal, exh. 5, Technical Factor Amplification and Clarification at 1-7.

Our Bid Protest Regulations require all protest allegations to be filed not later than 10 calendar days after the protester knew, or should have known, of the basis for protest. 4 C.F.R. § 21.2(a)(1). These new arguments, based on the information that the protester had when it filed its initial protest on March 28, but raised for the first time on April 17 in response to the agency’s dismissal request, are therefore untimely. Accordingly, we dismiss these protest grounds.

B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 3-4 (protest allegation was speculative because it was not supported by any evidence).

The protest is dismissed.

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