



Decision

Matter of: Alamo Strategic Manufacturing, Inc.

File: B-420716

Date: July 27, 2022

Rene H. Sosa, for the protester.

Allison Colsey Eck, Esq., Defense Logistics Agency, for the agency.

Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's exclusion of protester's proposal from competition due to late submission of protester's product demonstration model (PDM) is dismissed as untimely when filed more than ten days after the agency informed the protester that its PDM was received late by the agency and would not be considered.

2. Protester is not an interested party to challenge the agency's evaluation of the awardee's proposal where it would not be in line for award even if its protest were to be sustained.

DECISION

Alamo Strategic Manufacturing, Inc., a small business located in San Antonio, Texas, protests the award of a contract to Forum Industries, Inc., a small business also of San Antonio, Texas, under request for proposals (RFP) No. SPE1C1-21-R-0099, issued by the Defense Logistics Agency (DLA) for knee and elbow pads. Alamo challenges the agency's decision to exclude its proposal from the competition because it failed to submit a timely product demonstration model (PDM). The protester also challenges the award to Forum, asserting that the awardee's proposal misrepresented its source of supply.

We dismiss the protest.

BACKGROUND

The Defense Logistics Agency (DLA) issued the solicitation on November 2, 2021, as a small business set-aside, seeking knee and elbow pads in operational camouflage pattern and coyote. Dismissal Req., exh. 2, RFP at 1-2. The solicitation contemplated

the award of a single fixed-price indefinite-delivery, indefinite-quantity contract with a 3-year ordering period. *Id.* Award was to be made to “the responsible offeror that offers the lowest price, that is determined to be fair and reasonable, and whose offer is determined to be technically acceptable in accordance with sections L and M of this solicitation.” *Id.* at 2. As relevant here, to be technically acceptable, “an offer must meet the minimum requirements of this solicitation and take no exception to any of the terms and conditions” and “must submit product demonstration models that are rated as acceptable in accordance with the criteria established in this solicitation.” *Id.* at 2, 54.

The solicitation advised that proposals were to be submitted by 3:00 p.m. local time on December 1, 2021.¹ *Id.* at 1. Proposals were to include PDMs, consisting of three pairs of knee pads and three pairs of elbow pads. *Id.* at 53. The solicitation provided that PDMs “must be received prior to the time and date set forth for closing of offers.” *Id.* The solicitation cautioned: “Failure to furnish [product demonstration] models by the time and date specified in the solicitation may be cause for rejection of the entire offer if not otherwise acceptable under the provisions for considering late offers.” *Id.* By solicitation amendment, offerors were further notified of the requirements necessary to obtain access to the base to make delivery of their proposals. Dismissal Req., exh. 3, RFP, amend. 0001 at 2. The amendment also advised that “[u]ltimately, it is the offeror’s responsibility to ensure that its proposal is received at the correct location at the correct time,” and that “[f]ailure to do so may result in the offeror’s proposal being deemed untimely and not considered further for award[.]” *Id.*

DLA received timely proposals, which included timely submission of PDMs, from two offerors, including Forum, by the December 1, 2021 closing date for receipt of proposals. Dismissal Req. at 4. The agency also received a written proposal via electronic submission from Alamo by the RFP’s closing date. *Id.*; Protest, exh. 3, DLA Confirmation. The agency, however, did not receive Alamo’s PDMs by the December 1 deadline. Dismissal Req. at 4; Protest, exh. 2, UPS Tracking Notice at 2 (showing unsuccessful delivery on December 1, 2021).² Alamo’s PDMs were delivered by commercial carrier on December 3, 2021. Resp. to Dismissal Req. at 2. By letter dated January 5, 2022, DLA notified Alamo that its PDM submission was received late and would not be considered. Protest, exh. 5, Notice of Receipt of Late PDM (explaining that Alamo’s PDM “was not received at our installation prior to the time set for receipt of PDMs” and therefore “is considered ‘late’ and will not be considered).

After evaluating proposals, DLA concluded that Forum was the lowest-priced, technically acceptable offeror and, on March 15, 2022, awarded a contract to Forum.

¹ Proposals and PDMs were to be submitted to the Business Opportunities Office, Building 45-C-167, 700 Robbins Avenue, Philadelphia, PA 19111-5092. RFP at 2.

² DLA Troop Support is located on a Naval facility located at 700 Robbins Avenue, Philadelphia, Pennsylvania as identified on page 1 of the Solicitation. RFP at 1. Neither the Navy facility where DLA Troop Support is located, nor DLA Troop Support was closed on December 1, 2021. Dismissal Req. at 4.

Dismissal Req., exh. 4, Award. On March 25, 2022, Alamo filed a protest with the agency challenging the determination that Alamo's PDM submission was late. Protest, exh. 8, Agency Protest at 1-2. The protester also asserted that the awardee would not be providing an end item consistent with the PDM that it submitted for evaluation. *Id.*

On April 19, 2022, DLA denied Alamo's protest, concluding that any challenge to the lateness of Alamo's PDM submission was untimely. Protest, exh. 7, Agency Protest Response at 1. The agency explained that Alamo "was notified on or about January 5, 2022, that its PDM was determined to be a 'late submission' pursuant to the terms of the [s]olicitation," but that Alamo's "challenge was not submitted until March 25, 2022, seventy-nine (79) days after notification was provided." *Id.* DLA found that Alamo's challenge to the determination that its PDM was late was untimely because it was not filed within 10 days after the basis of protest was known or should have been known. *Id.* The agency also denied Alamo's complaints pertaining to the awardee's PDM. Thereafter, Alamo filed the current protest with our Office on April 29, 2022.

DISCUSSION

Alamo challenges the agency's decision to exclude its proposal from the competition due to its failure to submit a PDM by the solicitation's deadline. Alamo contends that "any lateness" in the agency's receipt of its PDMs was caused by the government, and thus, its proposal should remain eligible to compete. The protester also challenges the award to Forum, asserting that the awardee's proposal misrepresented its source of supply.

The agency argues that the protest to our Office is untimely because the protester's agency-level protest was untimely. Dismissal Req. at 5-7. The agency notified the protester on January 5 that its PDM submission was received late and would not be considered. *Id.*; Protest, exh. 5, Notice of Receipt of Late PDM at 1. The agency contends that this notification provided the protester with knowledge of its basis of protest. Dismissal Req. at 6-7. Because the protester's agency-level protest was not filed until March 25, more than 10 days after January 5, the agency contends that the agency-level protest was untimely. *Id.*

Under our Bid Protest Regulations, a matter initially protested to the contracting agency will be considered timely by our Office only if the agency protest was filed within the time limits provided by our Regulations, 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). In this case, no party suggests that the agency's regulations impose a more stringent time for filing, so the timeliness rules provided by our Regulations are appropriately applied to the protester's agency-level protest. Where, as here, the protester is challenging its exclusion from the competition, the protester was required to file its agency-level protest within ten days of when it knew or should have known it was excluded from the competition. See 4 C.F.R. § 21.2(a)(2).

Here, Alamo knew, or should have known, as of January 5, 2022, that its PDM was received late by the agency and would not be considered. *Id.*; Protest, exh. 5, Notice of

Receipt of Late PDM at 1. The protester thus knew, or should have known, as of that date that its proposal would not be considered for award. The protester's March 25 agency-level protest challenging the elimination of its proposal from the competition was not filed within 10 days of January 5, 2022, and was therefore untimely. Accordingly, we conclude that the instant challenge to the protester's elimination from consideration for award is also untimely and dismiss this protest ground.³ See 4 C.F.R. § 21.2(a)(3).

The protester also challenges the agency's technical evaluation of the awardee's proposal. Because, however, as discussed above, the protester did not timely challenge the elimination of its proposal from the competition, and there was a third, acceptable proposal in the competition, Alamo would not be next in line for award even if we were to sustain Alamo's challenge to the agency's evaluation of the awardee's proposal. Thus, Alamo is not an interested party to raise this argument. 4 C.F.R. § 21.0(a); see *CACI Dynamic Sys., Inc.*, B-406130, Feb. 28, 2012, 2012 CPD ¶ 77 at 8 (a protester is not an interested party to challenge the evaluation of the awardee's proposal where it would not be in line for award were its protest sustained).

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

³ Alamo also argues that its protest should nevertheless be considered under the good cause and significant issue exceptions to our timeliness rules. Resp. to Dismissal Req. at 4. The good cause exception to GAO's timeliness rules is limited to circumstances where compelling reasons beyond the protester's control prevent the protester from filing a timely protest, while the significant issue exception is limited to untimely protests that raise issues of widespread interest to the procurement community, and which have not been considered on the merits in a prior decision. *Baldt Inc.*, B-402596.3, June 10, 2010, 2010 CPD ¶ 139 at 2-3. Alamo has not demonstrated any compelling reason why it could not have timely challenged its elimination from the competition, nor has it demonstrated the presence of a significant issue not previously addressed by our Office.