



Decision

Matter of: Superior Optical Labs, Inc.

File: B-421880

Date: September 27, 2023

John E. McCarthy, Jr., Esq., Zachary H. Schroeder, Esq., Crowell & Moring LLP, and Elizabeth Haws Connally, Esq., Connally Law, PLLC, for the protester. David S. Gallacher, Esq., and Lauren V.T. Irish, Esq., Sheppard Mullin Richter & Hampton LLP, for the intervenor. Natica Chapman Neely, Esq., Department of Veterans Affairs, for the agency. Charmaine A. Stevenson, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is dismissed where the matter involved is the subject of litigation before a court of competent jurisdiction.

DECISION

Superior Optical Labs, Inc., a small business of Ocean Springs, Mississippi, protests the terms of solicitation No. 36C24723Q0934, issued by the Department of Veterans Affairs (VA) for the manufacture of prescription eyeglasses and provision of optician services for the VA's Veterans Integrated Service Network (VISN) 7. The protester contends that the agency's justification and approval in support of the limited competition of a short-term or "bridge" contract is unlawful and unreasonable. The protester further contends that the solicitation is materially flawed because it contains numerous technical requirements that are unduly burdensome but does not include any technical evaluation criteria, and unreasonably fails to require that the agency consider unbalanced pricing even though award will be based on price alone.

We dismiss the protest because the matter involved is currently pending before a court of competent jurisdiction.

We will not decide a protest where the matter involved is the subject of litigation before a court of competent jurisdiction. 4 C.F.R. § 21.11(b); *Oahu Tree Experts*, B-282247, Mar. 31, 1999, 99-1 CPD ¶ 69. Even where the issues before the court are not the same as those raised in our Office by a protester or are brought by a party other than

the protester, we will not consider the protest if the court's disposition of the matter would render a decision by our Office academic. *Schuerman Dev. Co.*, B-238464.3, Oct. 3, 1991, 91-2 CPD ¶ 286 at 2-3; *Geronimo Svc. Co.--Recon.*, B-242331.3, Mar. 22, 1991, 91-1 CPD ¶ 321 at 2.

Prior to the issuance of the solicitation at issue here, the agency awarded to PDS Consultants, Inc. a contract with a 1-year base period and four 1-year options for the same services under a different solicitation. Superior Optical filed a bid protest at the U.S. Court of Federal Claims (COFC) challenging that award. In response to that protest, the agency took corrective action, terminating PDS Consultants' contract and canceling the solicitation. Subsequent to that corrective action, the agency then issued the solicitation at issue in this bid protest, which limited competition to only Superior Optical and PDS Consultants and sought a short-term bridge contract.

After Superior Optical filed its bid protest with GAO, PDS Consultants filed a complaint at the COFC that challenges the agency's cancellation of the prior solicitation and termination of the contract awarded to PDS Consultants in the agency's competition for its long-term requirements. In the COFC protest, PDS Consultants requests, among other things, that the court provide relief by ordering the agency to reinstate the contract previously awarded to PDS Consultants under the prior solicitation. In requesting that our Office dismiss this protest because of PDS Consultants' COFC protest, the agency represents: "If the Court determines that VA's decision to take corrective action was arbitrary and capricious or otherwise contrary to law and if, as a result of that decision, VA must reinstate PDS's Contract No.35C24723D0003, VA will be required to rescind the instant RFQ [request for quotations]." Memorandum of Law at 3-4 n.5; see *a/so* Req. for Dismissal at 3.

Initially, our Office declined to dismiss the protest because we agreed with the protester that PDS Consultants' protest at the COFC and Superior Optical's protest at GAO do not involve the same matter and raise distinct issues. Electronic Protest Docketing System (Dkt.) No. 22. Our Office was concerned that dismissal of the protest would deprive the protester of any review of the challenged solicitation. Dkt. No. 29. Nonetheless, upon further consideration, we conclude that the matter involved is the subject of litigation before the court because the court's disposition of PDS Consultants' protest could render a decision by our Office academic. See *Harrington, Moran, Barksdale, Inc.*, B-401934.2, B-401934.3, Sep. 10, 2010, 2010 CPD ¶ 231 at 2 n.2 (dismissing protest grounds challenging the issuance of five out of eight challenged task orders because the five task orders were challenged by another protester at COFC, and even though the issues raised in the COFC protest were unrelated to the issue before GAO, the COFC's disposition of that protest could render a decision by our Office academic).

In this regard, if the court orders the VA to reinstate PDS Consultants' contract awarded under the prior solicitation, the agency will rescind the solicitation challenged by Superior Optical's protest before our Office. Accordingly, we view the matter involved in

Superior Optical's protest as currently before a court of competent jurisdiction and dismiss the protest. 4 C.F.R. § 21.11(b).

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel