



Decision

Matter of: Excelsior Ambulance Service, Inc.

File: B-421948

Date: September 27, 2023

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GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to comply with the solicitation dissemination requirements of Federal Acquisition Regulation part 5 because protester did not receive notification of solicitation posting in the SAM.gov database or directly from the agency is dismissed as legally and factually insufficient where the protester's allegations, even if unrebutted, fail to establish a violation of procurement law by the agency.

DECISION

Excelsior Ambulance Service, Inc. (EAS), a service-disabled veteran-owned small business (SDVOSB) located in Ludowici, Georgia, protests the actions of the Department of Veterans Affairs (VA) in connection with request for proposals (RFP) No. 36C24723R0003, issued by the VA to obtain advanced life support and stretcher van transportation services. EAS, the incumbent contractor, contends that it intended to submit a proposal for the "follow-on" contract but was unable to do so because the SAM.gov system failed to provide notification of the solicitation posting and the agency otherwise failed to notify it that the solicitation was posted.

We dismiss the protest because, as filed with our Office, it does not establish a valid basis for challenging the agency's actions.

The VA issued the RFP on May 26, 2023, as a set-aside for SDVOSB concerns by posting the solicitation on SAM.gov pursuant to the requirements of Federal Acquisition Regulation (FAR) section 5.101(a)(1). This section requires a contracting agency to

post solicitations expected to exceed \$25,000 on SAM.gov.¹ The due date for proposals was June 26. Req. for Dismissal at 1. The VA received timely proposals from multiple SDVOSB concerns, but not from EAS. Following evaluation of proposals, the agency selected an offeror's proposal for award. *Id.* at 1-2. On August 30, the protester emailed the contracting officer to inquire about the follow-on contract and learned that the solicitation had already been issued and that the proposal due date had passed. *Id.* at 3. This protest followed.

EAS raises two arguments against the VA's failure to meet the solicitation dissemination requirements of FAR part 5. First, the protester asserts that it is registered in the SAM.gov system and routinely receives automated notices of upcoming solicitation postings from the system, but it never received a SAM notification of the VA's May 26 solicitation posting. Protest at 2; Resp. to Req. for Dismissal at 1. According to the protester, the system had notified the firm of other solicitations and awards both before and after the May 26 solicitation posting, and the protester implies that the reason it did not receive a notification about the May 26 solicitation was due to "well-known and well-documented 'issues' that the Government has been having with the SAM system over the last year or more." Protest at 2.

Next, EAS contends, without any supporting evidence, that it explicitly informed VA personnel of its intent to submit a proposal for the "follow-on" contract but the agency failed to inform EAS that the solicitation had been posted on SAM.gov. *Id.* EAS also asserts that since it had responded to the agency's sources sought notice, the VA knew of its interest in competing for the follow-on contract. Resp. to Req. for Dismissal at 2.

The VA requests dismissal of all grounds of protest, arguing that EAS failed to show a valid factual or legal basis of protest. See *generally*, Req. for Dismissal at 2-5. Specifically, the agency argues that it discharged its obligation to adequately publicize its requirement when it posted the solicitation on SAM.gov. See FAR 5.003 ("For any requirement in the FAR to publish a notice, the contracting officer must transmit the notices to the GPE [government-wide point of entry]."). As explained by the contracting officer:

I posted the Solicitation to SAM.gov with no technical difficulties and in response received timely proposals from more than one service-disabled veteran-owned small business (SDVOSB). I did not send the Solicitation directly to any potential offeror, so the posting on SAM.gov is the only information an offeror would have received to prompt the submission of a

¹ SAM.gov is the current governmentwide point of entry (GPE) which serves as the single point where government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. FAR 2.101; *Correct Sols., LLC*, B-421533, May 31, 2023, 2023 CPD ¶ 133 at 2 n.1. As relevant here, the SAM.gov database provides instructions to users about saving searches and getting notifications of contract opportunities. See, e.g., https://www.youtube.com/watch?v=f-Njq_OCM3w.

proposal. None of the offerors communicated any difficulties with accessing the Solicitation posted on SAM.gov. I have attached the confirmation of the successful posting to SAM.gov from May 24, 2023.

Req. for Dismissal Exh. 2, Decl. of Contracting Officer at 1.

As to the protester's claim that it had informed agency personnel of its intent to compete for the "follow-on" contract, the contracting officer further attests in his sworn declaration: "I did not have any communication from Protester prior to the closing date in which Protester stated that it intended to submit a proposal under the Solicitation. I was also not informed by any other VA employee of any communication from Protester prior to the closing date that it intended to submit a proposal." *Id.* Since each of the protester's allegations lack the required factual and legal support, the agency argues that the protest should be dismissed. We agree with the agency.

Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Cybermedia Techs., Inc.*, B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. To achieve this end, our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), 21.1(f), and 21.5(f); *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. In other words, where a protester's allegations are based on speculation, factual inaccuracies, or flawed legal assumptions, we will summarily dismiss a protest without requiring the agency to submit a report. See *Xenith Grp., LLC*, B-420706, July 14, 2022, 2022 CPD ¶ 184 at 3; *Ahtna Facility Servs., Inc.*, B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 11.

With regard to the protester's first allegation, it is clear from the face of the protest submission, and as confirmed by the record before us, that the solicitation was posted and accessible on SAM.gov. Our Office has consistently explained that protesters are charged with constructive notice of the contents of procurement actions published on the GPE. *Allosense, Inc.*, B-420201, Dec. 27, 2021, 2021 CPD ¶ 395 at 5; *Prudential Protective Servs., LLC*, B-418869, Aug. 13, 2020, 2020 CPD ¶ 272 at 3. While EAS asserts that it never received notification of the VA's solicitation posting from the SAM.gov system, EAS has not explained why a failure of the SAM notification function is a violation of procurement law or regulation where it is undisputed that the solicitation was successfully posted and accessible.

While the SAM notification function may be a useful feature of the system, one that may aid the protester in identifying potential contracting opportunities, reliance on that feature does not nullify its constructive knowledge of a solicitation where it is undisputed that the agency properly posted the solicitation on SAM.gov and it was fully available to protester. Our Office will dismiss a protest allegation for failing to state a valid basis of protest when the allegation, on its face, fails to demonstrate improper agency action. See *Brackett Aircraft Radio Co.*, B-246282 Jan. 8, 1992, 92-1 CPD ¶ 43 at 1 (dismissing allegation as failing to state valid basis when the allegation did not, on its face,

demonstrate improper agency action). Here the allegation, as filed by EAS, presents no legal basis for protest and is dismissed.

As to EAS's claim that it repeatedly expressed its interest in competing for the "follow-on" contract to VA personnel, we dismiss that claim because EAS has not provided any evidence to support its allegation.² The protester nakedly asserts, without any detail or supporting evidence, that EAS "explicitly communicated to multiple VA personnel its intent to submit a proposal once the solicitation was issued." Protest at 2. Setting aside that the protester never represents that it requested a copy of the solicitation, as opposed to merely expressing interest in potentially competing, the bare assertion in the protest fails to provide adequate supporting detail. As stated above, our bid protest regulations obligate a protester to set forth all known legal and factual grounds supporting its allegations of improper agency action, including providing copies of any relevant documents. 4 C.F.R. § 21.1(c)(4). In response to the protester's allegations, the contracting officer provided a sworn declaration that he neither had nor otherwise was aware of such communications with the protester. Req. for Dismissal Exh. 2, Decl. of Contracting Officer at 1. In response, other than noting that EAS had responded to an earlier sources sought notice, the protester again merely asserts, without any supporting evidence, that it had "other communications with the VA." Resp. to Req. for Dismissal at 2. Since EAS has failed to provide any evidence to establish that the agency violated any applicable procurement laws or regulations, we find that the protester has failed to state a valid basis of protest.³ See 4 C.F.R. § 21.5(f).

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

² Although neither the protest nor the opposition to the request for dismissal specifically references FAR section 5.102(c), the protester ostensibly relies upon this provision. That provision provides that "in addition" to posting to SAM.gov, an agency should also provide by electronic data interchange a copy of the solicitation upon the request of a small business concern. FAR 5.102(c)(1).

³ In its opposition to the request for dismissal, the protester also asserts that EAS "is absolutely prepared to provide sworn affidavits and/or Hearing testimony for the points raised in the protest." Resp. to Req. for Dismissal at 2. Such an offer, however, is unavailing. In this regard, we have explained that initially asserted insufficient allegations are not cured by the subsequent presentation of supporting declarations. Our decisions explain the piecemeal presentation of evidence, information, or analysis supporting allegations previously made is prohibited because it unnecessarily delays the procurement process and our ability to resolve protests within the requisite 100-day period. *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 4 (declining to consider declaration submitted in response to an agency's request for dismissal where the information was known prior to the initial protest filing).