



Decision

Matter of: Federal Working Group, Inc.

File: B-422251.6

Date: April 1, 2024

Edmund M. Amorosi, Esq., Jonathan D. Shaffer, Esq., and Aaron A. Kor, Esq., Haynes and Boone, LLP, for the protester.

Scott M. McCaleb, Esq., Tracye Winfrey Howard, Esq. and Lisa M. Rechden, Wiley Rein LLP, for Intellect Solutions LLC, the intervenor.

Stephanie Quade, Esq., Department of the Treasury, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest asserting that the agency must amend the solicitation to reflect allegedly changed requirements is dismissed as untimely where the protest was filed more than 10 days after the protester knew or should have known its basis for protest.

DECISION

Federal Working Group, Inc. (FWG), of McLean Virginia, protests the scope of the corrective action being taken by the Department of the Treasury, Office of the Comptroller of the Currency (OCC), in response to FWG's previously filed protests. FWG maintains that, as part of the corrective action, the agency must amend the solicitation and permit the complete revision of vendors' quotations.

We dismiss the protest.

BACKGROUND

From July 2017 through January 2023, FWG provided information technology services for OCC pursuant to a task order referred to as the "Information Technology Infrastructure Support Services" (ITISS) task order.¹ Req. for Dismissal at 1. In July

¹ The task order was competed among contractors holding certain General Services Administration federal supply schedule (FSS) contracts.

and September 2022, the agency issued modifications to the ITISS task order, adding various requirements to the task order's scope of work.² *Id.* at 2.

In January 2023, the agency issued request for quotations (RFQ) No. 2031JW23Q00021 (referred to as the "Information Technology Enterprise Infrastructure Management" or "ITEIM" solicitation), seeking quotations for a "follow-on" task order to FWG's ITISS task order.³ *Id.* That solicitation, which is the subject of this protest, provided for source selection based on a best-value tradeoff between three evaluation factors: corporate experience; key personnel; and price. Protest, attach. 1, ITEIM RFQ.

To accommodate the time necessary to conduct the competition for the ITEIM follow-on task order, the agency awarded FWG a sole-source 1-year interim or "bridge" task order, with a 1-year option period--extending FWG's potential performance of the requirements contemplated under the ITISS task order through January 2025.⁴ Req. for Dismissal at 2.

In February 2023, quotations responding to the solicitation for the follow-on (ITEIM) task order were submitted by multiple FSS contractors, including FWG and Intellect Solutions, LLC. On December 4, 2023, the agency selected Intellect for award.

On December 13, 2023, FWG filed its initial protest with our Office challenging the agency's source selection decision. Thereafter, FWG filed four supplemental protests (on January 2, January 22, January 24, and February 1, 2024, respectively) challenging various aspects of the agency's evaluation of proposals under each of the three evaluation factors (corporate experience, key personnel, and price).

On February 9, following a conference call conducted by GAO, the agency filed a notice of corrective action, stating:

It is the Agency's intent to reevaluate key personnel and make a new award decision. The Agency may engage with quoters after the reevaluation. If the Agency decides to engage with quoters, such engagement will be limited to the key personnel factor only. The Agency does not intend to

² Among other things, the modifications provided for performance of disaster recovery activities at a data center in Richardson, Texas, and network architecture support services.

³ The solicitation was similarly issued to contractors holding the required FSS contracts.

⁴ FWG is currently performing under that task order.

engage with quoters regarding the Corporate Experience or Price factors and does not intend to allow revisions to either.

Notice of Corrective Action at 1.

On February 12, FWG submitted to our Office an objection to the limited scope of the agency's proposed corrective action, asserting (for the first time) that the scope of work reflected in the solicitation for the follow-on task order was "antiquated," and maintaining that "an RFQ amendment and revised quotes are necessary given the passage of time." Objection to Corrective Action at 1-2. In essence, FWG was presenting a completely new complaint--challenging the accuracy of the solicitation requirements--in the guise of objecting to the limits the agency had placed on what would be addressed through corrective action. In making this assertion, FWG referenced the requirements that were added to FWG's ITISS task order in July and September, 2022. FWG further complained that "from July to December 2023," FWG had been required to perform a greater quantity of "priority projects" than currently estimated by the ITEIM solicitation, adding that "during 2023" and "by the end of January 2024," FWG had been required to respond to an unexpectedly large number of "Plan of Action & Milestones." *Id.* at 1-3. Finally, FWG maintained that "evolving" technology required reliance on different resources than those contemplated by the ITEIM solicitation. *Id.*

On February 15, the agency responded to FWG's objection, maintaining that the scope of the corrective action was properly limited to concerns regarding key personnel, and further noting that FWG's assertions regarding the allegedly "antiquated" nature of the ITEIM solicitation requirements were both "factually incorrect" and not timely raised. Agency Response to Objection at 2-3. The agency further responded that it had reviewed the ITEIM statement of work and was "confident that the scope more than adequately outlines its current requirements," submitting a declaration from the agency's deputy chief information officer addressing FWG's various factual assertions. *Id.*

On February 16, GAO dismissed FWG's prior protests as academic, based on the agency's pending reevaluation and new source selection decision. *Federal Working Group, Inc., B-422251 et al.*, Feb. 16, 2024 (unpublished decision).

On February 20, FWG filed this protest, in which it largely repeats the arguments it raised in its February 12 objections to the scope of the agency's corrective action. Specifically, FWG refers to "the RFQ's now-antiquated requirements"; asserts that the RFQ "no longer reflects the agency's actual minimum needs or the actual requirements to be performed under the solicited order"; and maintains that, unless FWG is permitted to revise all aspects of its proposal, it will be "unable to fully compete for the agency's actual minimum needs and requirements."⁵ Protest at 1-2. In its protest challenging the

⁵ In its protest, FWG also asserts that, due to the allegedly outdated requirements, the solicitation's "present estimates are no longer accurate," and maintains that the agency
(continued...)

accuracy of the solicitation requirements, FWG, again relies on its experience performing the ITISS requirements prior to the closing date for the ITEIM solicitation; its post-closing-date performance “during 2023” and through “January 2024”; and “OCC’s new technologies.” *Id.* at 9-10. Stated differently, rather than simply challenging the scope of the proposed corrective action, FWG is now raising, as a wholly new protest, the arguments it expressed in its objections to the agency’s proposed corrective action.

DISCUSSION

On February 27, the agency filed a request to dismiss the protest, first noting that FWG’s assertions are based, in part, on its experience in performing the ITISS task order requirements prior to the February 2023 solicitation closing date; yet, FWG’s February 20, 2024, protest regarding the solicitation’s allegedly “antiquated” requirements was filed nearly a year after that date. The agency further notes that the additional references in FWG’s protest to its post-closing-date performance of the ITISS requirements fail to identify any triggering event or disclosure of information that occurred within the 10 days preceding FWG’s February 20, 2024 protest.⁶ Req. for Dismissal at 3. In short, the agency maintains that FWG’s current protest allegations, based on the premise that the ITEIM solicitation fails to reflect the agency’s current requirements, are untimely. We agree.

When a protester asserts that an agency is required to amend a solicitation to reflect allegedly changed requirements, that protest is analogous to a challenge to the terms of the solicitation. See, e.g., *Peraton, Inc.*, B-416916.11, Feb. 8, 2021, 2021 CPD ¶ 88 at 4. Our Bid Protest Regulations require that protests based on alleged improprieties in a solicitation that are apparent prior to the time set for receipt of initial proposals must be filed prior to that time; alternatively, if no further submissions are anticipated, any alleged solicitation improprieties must be protested within 10 days of when the alleged impropriety was known or should have been known. 4 C.F.R. § 21.2(a)(1). *Peraton, Inc.*, *supra*, at 4; *Computer World Servs. Corp.*, B-418287.3, June 29, 2020, 2020 CPD ¶ 204 at 3-4. In this context, our Bid Protest Regulations provide that a protest “shall . . . [s]et forth all information establishing the timeliness of the protest,” and where a protest fails to comply with that requirement, it may be dismissed. 4 C.F.R. 21.1(c)(6); *University of Maryland*, B-416682, Oct. 24, 2018, 2018 CPD ¶ 366 at 7.

Here, FWG’s protest assertions regarding the solicitation’s allegedly outdated requirements are based, in part, on its performance of the ITISS task order requirements prior to the February 2023 ITEIM solicitation closing date. To the extent

intends to modify the task order after issuance. *Id.* at 10. These allegations are based on the premise that the agency’s needs have changed; therefore, as discussed below, they are not timely presented.

⁶ The agency notes that, despite having filed five protests between December 13, 2023, and February 1, 2024, none of these prior protests asserted outdated solicitation requirements.

FWG's protest is asserting that the ITEIM solicitation did not reflect the agency's requirements at the time quotations were submitted, it failed to file its protest prior to submission of its quotation, as required. See 4 C.F.R. § 21.2(a)(1).

To the extent FWG's protest is based on alleged changes to the agency's requirements that became apparent after quotations were submitted in February 2023, it was required to file its protest within 10 days of the time such changes became apparent. *Id.* However, nothing in FWG's protest identifies any particular changes or disclosure of new information that occurred within the 10-day period preceding FWG's submission of its February 20, 2024 protest. Rather, FWG asserts that its protest should be considered timely because it was filed within 10 days of the agency's notice of corrective action. However, nothing in the agency's notice of corrective action reflected, discussed, or disclosed any changes in the agency's requirements. Again, while FWG purports to base its protest on the scope of the agency's corrective action, its arguments pertain to the accuracy of the solicitation's requirements. On the record here, we conclude that FWG's protest allegations are not timely filed.

The protest is dismissed.

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