



Decision

Matter of: Sea Box, Inc.

File: B-422234.4

Date: June 13, 2024

Robert A. Farber, Esq., for the protester.

Ron Seignious, Intrepid Eagle Logistics, Inc., for the intervenor.

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DIGEST

Protest challenging the awardee's eligibility for award due to a lapse in its System for Award Management registration is dismissed where the protester cannot demonstrate that it is an interested party to raise this ground of protest.

DECISION

Sea Box, Inc., a small business located in East Riverton, New Jersey, protests the award of a contract to Intrepid Eagle Logistics, Inc. (Intrepid), of Bethesda, Maryland, under request for proposals (RFP) No. SPE8ED-23-R-0016, which was issued by the Defense Logistics Agency (DLA) for a quantity of cargo containers. The protester contends that Intrepid was ineligible for award due to a lapse in its System for Award Management (SAM) registration.

We dismiss the protest on the basis that the protester is not an interested party.

The RFP anticipated award of a single, fixed-price definite-delivery contract for a quantity of cargo containers, identified as Lot 2. Req. for Dismissal, exh. 1, RFP at 7. The RFP provided for award to the offeror whose proposal was most advantageous to the government, considering the following three evaluation factors: technical capability, past performance, and price; and when combined, the non-price factors were approximately equal to price. *Id.* at 60. In response to the RFP, DLA received seven proposals, three of which, including Sea Box's and Intrepid's proposals, were included in the competitive range. *Id.* As relevant here, the record shows that all three proposals received a rating of acceptable under the technical capability factor and the intervening

offeror received a higher past performance score than the protester under the past performance factor.¹ Intrepid offered a total price of \$5,430,000; the intervening offeror, a total price of \$5,549,328; and Sea Box, a total price of \$6,285,120.² *Id.* at 3. After completion of the evaluation, the agency determined that Intrepid's proposal was the most advantageous to the government and subsequently awarded the contract to Intrepid on April 3, 2024. *Id.* at 2.

After being notified of the award decision and receiving a debriefing, Sea Box filed this protest with our Office on April 19. Sea Box alleges that the award to Intrepid was improper because Intrepid failed to maintain continuous SAM registration between submission of its proposal on September 12, 2023, and the April 3, 2024, date of contract award. *See generally*, Protest at 3-5.

DLA requests dismissal of the protest, arguing that the protester is not an interested party to challenge the award decision. The agency maintains that Sea Box lacks the direct economic interest necessary to be considered an interested party because there is an intervening offeror whose proposal was evaluated more favorably than Sea Box's in terms of both price and past performance, and Sea Box has failed to challenge the evaluation of the intervening offeror's proposal. On that basis, DLA asserts that even if Sea Box's protest were sustained, the intervening offeror's proposal would be next in line for award because Sea Box's proposal did not exceed the intervening offeror's proposal in any material respect. Req. for Dismissal at 3-4.

Sea Box responds that it is an interested party because the intervening offeror's proposal has expired whereas its proposal remains eligible for award due to Sea Box's pursuit of this protest which, according to Sea Box, "represents an implied extension" of its proposal acceptance period. Protester's Obj. to Req. for Dismissal at 3 (*citing Western Star Hosp. Auth., Inc.*, B-414198.2, B-414198.3, June 7, 2017, 2017 CPD ¶ 183 at 9). We disagree.

The jurisdiction of our Office is established by the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. That authority states that only an interested party may protest a federal procurement, including the award or proposed award of a contract. *Id.* §§ 3551, 3553(a). That is, a protester must be an actual or prospective bidder or vendor whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is

¹ The record shows that the agency did not rank proposals. Req. for Dismissal, exh. 9, Resp. to Debrief Question No. 4 at 2.

² Sea Box submitted two proposals: one, for Korean end products with a total price of \$6,285,120 and the second, for end products made in the United States with a total price of \$7,451,168. Req. for Dismissal at 2 n.3. The agency states that for evaluation purposes, only the protester's offered price for its Korean end products was considered. *Id.* The second proposal is not at issue in the protest; accordingly, it is not further discussed.

interested involves the consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *REEL COH Inc.*, B-418095, B-418095.2, Jan. 10, 2020, 2020 CPD ¶ 55 at 7. Generally, a party will not be deemed to have the necessary economic interest to maintain a protest if it would not be in line for award if its protest were sustained. *Id.*; 4 C.F.R. § 21.0(a).

In a post-award context, we have generally found that a protester is an interested party to challenge an agency's evaluation of proposals only where there is a reasonable possibility that the protester would be next in line for award if its protest were sustained. *CACI, Inc.-Fed.*, B-419499, Mar. 16, 2021, 2021 CPD ¶ 125 at 5; *OnSite Sterilization, LLC*, B-405395, Oct. 25, 2011, 2011 CPD ¶ 228 at 4. In this regard, where there is an intervening offeror in line for the award if the protester's challenge was sustained, the intervening offeror has a greater interest in the procurement than the protester. In that circumstance, we generally consider the protester's interest to be too remote to qualify as an interested party. *HCR Constr., Inc.*; *Southern Aire Contracting, Inc.*, B-418070.4, B-418070.5, May 8, 2020, 2020 CPD ¶ 166 at 6-7 n.6.

As noted, the record shows there is an intervening offeror with a proposal that was both more highly rated under the non-price factors and lower-priced than the protester's proposal. Req. for Dismissal at 2. Since Sea Box has not challenged the agency's evaluation of its own proposal, or of the intervening proposal that would precede its proposal in eligibility for award under this solicitation, Sea Box would not be in line for award even if its protest were sustained. Sea Box therefore lacks the direct economic interest required to maintain a protest and is not an interested party to protest the award to Intrepid. See, e.g., *Panum Telecom, LLC*, B-418202, Jan. 17, 2020, 2020 CPD ¶ 34 at 3 (dismissing protest for lack of interested party status because the protester did not timely challenge the evaluation of an intervening offer when the protester learned of the intervening offer); *Sotera Def. Sols., Inc.*, B-414056 *et al.*, Jan. 31, 2017, 2017 CPD ¶ 46 at 8 (dismissing protester's award challenge, including allegation that agency converted award basis from best-value tradeoff to lowest price, technically acceptable basis, where the protester failed to challenge intervening offeror who was next in line for award).

Notwithstanding its failure to advance any challenges to the agency's underlying evaluation of its proposal or the proposal of the intervening offeror, Sea Box nevertheless claims that it would be in line for award if we sustained its protest because the acceptance period of all proposals, except its own, expired during the period after award. Protester's Obj. to Req. for Dismissal at 2-3. As germane to this argument, the record shows that on March 29, 2024, DLA requested proposal extensions from all three competitive range offerors, including Sea Box. DLA Resp. to Protester's Obj. to Req. for Dismissal at 1. The record further shows that each offeror, including Sea Box and the intervening offeror, shared a common proposal expiration date of April 16 and that award was made on April 3. *Id.* Thus, at the time Sea Box filed its protest on April 19, the acceptance period for both its proposal and the proposal of the intervening offeror had expired.

Sea Box argues that, unlike the intervening offeror, its proposal was “revived” when it filed this protest with our Office and, therefore, Sea Box is the only offeror whose proposal has a substantial chance to receive the award were we to sustain the protest. Protester’s Resp. to Req. for Dismissal at 2-3; Protester’s Addn. Obj. to Req. for Dismissal at 1-2. Additionally, Sea Box alleges that the likelihood the intervening offeror would extend its acceptance period and revive its proposal if afforded the opportunity to do so by the agency is only 50 percent and, therefore, Sea Box has a substantial chance of receiving the award were its protest to be sustained. Protester’s Resp. to Req. for Dismissal at 3; Protester’s Addn. Obj. to Req. for Dismissal at 5.

In response to Sea Box’s claim that only its revived proposal would be eligible for award if its protest were sustained, DLA asserts that such an outcome would “universally privilege the protester at the expense of every other [competing] offeror.” DLA Resp. to Protester’s Obj. to Req. for Dismissal at 2. DLA further asserts that an offeror’s relative competitive standing should be based on its standing at the time of the contemporaneous evaluation and award that is being challenged, and that the protester’s claim that there is only a 50 percent chance that the intervening offeror would extend its acceptance period and revive its proposal are supported by nothing other than the protester’s own conjecture and is speculative. *Id.*

As an initial matter, we disagree with Sea Box’s self-serving assertion that it has in fact “revived” its expired proposal. In this regard, the protester fundamentally misconstrues our decisions upon which it relies for this assertion. Relevant here, our Office has issued a number of decisions denying agencies’ requests to dismiss protests for lack of interest where a bid or proposal has expired and where the filing of the protest is sufficient to demonstrate a continued, direct economic interest in a procurement so as to satisfy the applicable “interested party” standard.

For example, in *East West Research, Inc.*, B-237844, Feb. 28, 1990, 90-1 CPD ¶ 248 at 3, we denied an agency’s request for dismissal on the basis that the protester was not an interested party where its underlying proposal had expired during the pendency of a timely filed agency-level protest. We explained that in our view, the protester’s pursuit of a protest provided evidence of its intent to extend its offer acceptance period and to be bound by the offer if the protest were sustained.

Similarly, in *Western Star Hosp. Auth., Inc.*, *supra*, the protester challenged the agency’s rejection of its proposal on the basis that the protester had failed to timely grant an extension to the proposal’s acceptance period. The agency sought dismissal of the protest on the grounds that by failing to extend the acceptance period, the protester was not an interested party because it could not be next in line for award in the event its protest was sustained. We denied the agency’s request for dismissal, explaining that if the protester were to prevail in its protest, our Office would likely recommend that the agency readmit the protester to the competition. *Id.* at 7. In discussing the merits, we also noted, citing among other cases *East West Research, Inc.*, *supra*, that an offeror that pursues an agency-level or GAO protest provides

evidence of its intent to extend its offer acceptance period and to be bound by the offer if the protest were sustained. *Id.* at 9.

These decisions stand for the principle that a firm's pursuit of a protest is sufficient to demonstrate an intent to revive its bid or proposal and to be bound by its terms in the event its protest were sustained. Therefore, while such a firm has demonstrated a direct economic interest to satisfy the applicable interested party standard, these decisions do not stand for the proposition that the filing of a protest in fact "revives" the proposal. In this regard, our decisions recognize that an agency could ask an offeror to revive its proposal and proceed with award on that basis, but the agency would need to make--and the offeror would need to consent--to such an action.

Furthermore, nothing in these decisions supports Sea Box's argument that other unsuccessful offerors whose bids or proposals have expired should automatically be deemed to be eliminated from any further consideration in the procurement. In other words, while we have declined to dismiss a protest for lack of interest, nothing in these decisions implies that we will automatically exclude consideration of the protester's competitive standing with respect to other offerors' proposals that were otherwise awardable at the time of the contested contemporaneous evaluation and award.³ Indeed, where, as here, all proposals have expired, an agency may allow an offeror to waive the expiration of its proposal acceptance period and make award on the basis of the proposal as submitted, since a waiver under such circumstances is not prejudicial to the competitive system. *Labatt Food Serv.*, B-259900, May 3, 1995, 95-1 CPD ¶ 229 at 3.

In this regard, as stated previously, where a proposal has expired, our Office generally has recognized that an offeror may extend its acceptance period and revive its proposal if doing so would not compromise the integrity of the competitive procurement system. *See, e.g., Emagine IT, Inc.*, B-416344.3 *et al.*, Dec. 21, 2018, 2019 CPD ¶ 8 at 6 (*citing, Western Star Hosp. Auth., Inc., supra* at 10). For example, we have found revival of proposals to be appropriate where all offerors were granted the opportunity to extend their proposals on an equal basis. *BioGenesis Pac., Inc.*, B-283738, Dec. 14, 1999, 99-2 CPD ¶ 109 at 6. While Sea Box asserts that it is presently the only offeror whose revived proposal could be accepted for award, Sea Box points to no requirement that would preclude DLA from allowing the intervening offeror to revive its proposal--which

³ We note that in *International Alliance of Sports Officials (IASO)*, B-211549, Jan. 24, 1984, 84-1 CPD ¶ 110, we found a third-ranked bidder interested to challenge an award where the second bidder's bid had expired. That case is distinguishable. In *IASO*, we noted that in addition to the protester's allegation that the intervening bidder had gone out of business, the intervening bidder's bid had expired approximately two months prior to award and there was no evidence in the record that the bid had ever been extended. In contrast, here, there has been no suggestion that the intervening offeror has gone out of business, the intervening offeror had previously granted the agency's request for an extension of its proposal acceptance period, and its proposal was valid and acceptable prior to award, but subsequently expired shortly before Sea Box filed its protest.

was evaluated more favorably than the protester's under both the past performance and price factors. See *Rentfrow, Inc.*, B-243215, July 5, 1991, 91-2 CPD ¶ 25 at 4 (agency may seek proposal extension/revival from only the presumptive awardee without impropriety or prejudice to other competing offerors).

Under the circumstances here, if DLA were to request proposal extensions from all remaining eligible offerors if Sea Box's protest were sustained, we see no basis to conclude that the agency's actions would be prejudicial or otherwise would constitute unequal treatment. Therefore, based on the record presented, we dismiss the protest on the basis that Sea Box has not established that it has the direct economic interest required to maintain a protest challenging the agency's award decision. See *CAC/ Dynamic Sys., Inc.*, B-406130, Feb. 28, 2012, 2012 CPD ¶ 77 at 7-8 (protester is not an interested party to challenge award where there is an intervening offeror that would be in line for award were the protest to be sustained).

The protest is dismissed.

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