



Decision

Matter of: LCE Newport Beach, Inc.

File: B-422707

Date: July 30, 2024

Dennis Matthews, for the protester.
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Department of the Navy, for the agency.
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participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation criteria and set-aside decision are dismissed as untimely, and the remaining allegations fail to state a legally sufficient basis of protest.

DECISION

LCE Newport Beach, Inc., of Las Vegas, Nevada, protests the award of contracts to Data Link Solutions (DLS) and L3Harris (L3), under request for proposals (RFP) No. N0003924R4000, issued by the Department of the Navy, Naval Information Warfare Systems Command (Navy), for Multifunctional Information Distribution System (MIDS) Joint Tactical Radio System (JTRS) terminals and related services. The protester raises a number of challenges to the terms of the solicitation as well as the agency's award selection.

We dismiss the protest.

BACKGROUND

On December 14, 2023, the Navy issued the solicitation on an unrestricted basis, seeking proposals for development, production, sustainment, and systems engineering and integration of the MIDS JTRS. Req. for Dismissal, exh. 1 (RFP) at 1, 4-6. The solicitation anticipated award of one or more indefinite-delivery, indefinite-quantity (IDIQ) contracts. Award would be made on a best-value tradeoff basis, using a two-step evaluation process. *Id.* at 81. At the initial step, the agency would evaluate proposals for compliance with "mandatory gate criteria," on an acceptable/unacceptable

basis. *Id.* Offerors receiving an acceptable rating under the mandatory gate criteria would proceed to the next step, where proposals would be evaluated, considering price and the following three non-price evaluation factors: integrated master schedule, past performance, and small business participation. *Id.* at 81-82. Proposals that received an unacceptable rating under the mandatory gate criteria were deemed “ineligible for award” and would not be considered further. *Id.* at 81.

The solicitation established February 20, 2024, as the due date for proposals. *Id.* at 1. After the Navy’s award of two indefinite-delivery, indefinite-quantity (IDIQ) contracts to DLS and L3, the agency provided LCE Newport Beach with a debriefing on June 26. Req. for Dismissal at 2. On June 30, LCE Newport Beach filed this post-award protest with our Office.

DISCUSSION

The protester raises a variety of allegations. Specifically, LCE Newport Beach makes the following arguments: (1) the solicitation’s mandatory gateway evaluation criteria were “unfair and unreasonable”; (2) the agency improperly awarded contracts to two non-small businesses; (3) the debriefing contained improper redactions and did not “convey any meaningful discussion”; and (4) the protester questions “whether or not LCE Newport Beach was fairly treated and or can be considered a qualified supplier under what appears to be a ‘Lessor Qty’ Provider.” Protest at 1-2.

Before the due date for the submission of the agency report, the agency requested dismissal of LCE Newport Beach’s protest on the grounds that it is untimely, as well as legally insufficient. Req. for Dismissal at 3-10. In its two responses to that dismissal request, the protester did not substantively dispute or respond to the agency’s arguments. Resp. to Req. for Dismissal at 1-5; 2nd Resp. to Req. for Dismissal at 1-4. Instead, the protester simply asserts, among other things, that there is “no reason” to dismiss its protest, adding that the agency should have awarded the contract to LCE Newport Beach, a service-disabled veteran-owned small business, instead of two “big companies.” Resp. to Req. for Dismissal at 1.

Challenges to the Solicitation

LCE Newport Beach’s first two protest grounds challenge the terms of the solicitation. In this regard, the protester argues that the solicitation’s use of gateway criteria was “unfair and unreasonable,” and that the agency improperly awarded contracts to two non-small businesses. Protest at 1-2. Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *American Sys. Grp.*, B-418535, June 9, 2020, 2020 CPD ¶ 190 at 3. Our timeliness rules require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals or quotations be filed before that time.

4 C.F.R. § 21.2(a)(1); *AmaTerra Env'tl. Inc.*, B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3.

More specifically, underlying our timeliness rules regarding solicitation improprieties is the principle that challenges which go to the heart of the fundamental ground rules by which a competition is conducted should be resolved as early as practicable during the solicitation process. *A Squared Joint Venture*, B-413139, B-413139.2, Aug. 23, 2016, 2016 CPD ¶ 243 at 8. Such a rule promotes fundamental fairness in the competitive process by preventing an offeror from taking advantage of the government as well as other offerors, by waiting silently only to spring forward with an alleged defect in an effort to restart the procurement process, potentially armed with increased knowledge of its competitors' position or information. *Draeger, Inc.*, B-414938, Sept. 21, 2017, 2017 CPD ¶ 308 at 5. It also promotes efficiency by ensuring that concerns regarding a solicitation are raised before contractor and government resources are expended in pursuing and awarding the contract, thus avoiding costly and unproductive litigation after the fact. *Id.* A protester simply may not wait until after an award has been made to protest alleged flaws in the procurement's ground rules that were apparent prior to the submission of proposals. *DynCorp Int'l LLC*, B-415349, Jan. 3, 2018, 2018 CPD ¶ 12 at 9.

Here, it was apparent on the face of the solicitation that the RFP required offerors to demonstrate compliance with initial mandatory gate criteria, and that only those proposals receiving a rating of acceptable would be further evaluated. RFP at 81-82. To receive a rating of acceptable under this mandatory gate, the solicitation required offerors to provide certain certifications. *Id.* at 77. The RFP cautioned that any proposal receiving a rating of unacceptable under this mandatory gate would be "ineligible for award without further evaluation." *Id.* at 81. To the extent that LCE Newport Beach now asserts that these mandatory gate were "unfair and unreasonable," the protester was required to protest that alleged solicitation impropriety on or before February 20, 2024, the due date for receipt of proposals. RFP at 1; 4 C.F.R. § 21.2(a)(1). LCE Newport Beach, however, did not file its protest until over four months later, on June 30. This allegation is therefore dismissed as untimely.¹ 4 C.F.R. § 21.2(a)(1).

¹ To the extent that the protester argues that the disqualification of its proposal under the mandatory gateway--and not the gateway itself--was "unfair and unreasonable," this bare assertion, by itself, is insufficient to establish the likelihood that the protester will prevail in its claim of improper agency action. Protest at 1; *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. Where a protester relies on bare assertion, without further supporting details or evidence, our Office will find that the protest ground essentially amounts to no more than speculation and does not meet the standard contemplated by our regulations for a legally sufficient protest. *PricewaterhouseCoopers Pub. Sector LLP*, B-415129.3, July 31, 2018, 2018 CPD ¶ 272 at 3. Here, the protester does not explain or elaborate why the agency's evaluation was unfair; only that it was so. Thus, this unsupported assertion fails to state a legally sufficient ground of protest and is dismissed. *Id.*; 4 C.F.R. § 21.1(c)(4) and (f).

LCE Newport Beach also argues that the agency improperly made award to two large businesses, even though the solicitation referenced “small business” under the small business participation factor. Protest at 1; RFP at 79, 84. The RFP, however, clearly indicated--and offerors were clearly on notice--that the solicitation had not been set aside for small business. RFP at 1, 81 (“The Government is conducting this Full and Open competition IAW [in accordance with] Federal Acquisition Regulation (FAR) 15.101-1 – Tradeoff Process.”). Here, the protester conflates the solicitation’s small business participation evaluation factor with the concept of setting aside a procurement for small businesses. A plain reading of the RFP demonstrates the procurement was not set aside for small businesses, but rather simply advised that, as one of the three non-price evaluation factors, the agency would “evaluate the extent to which the proposal documents the Offeror’s commitment to meet the stated small business subcontracting participation objectives.” *Id.* at 84. Indeed, the evaluation factor explicitly discussed the submission requirements for “Large Business Offerors.” *Id.* at 79.

Because the RFP was clear that the procurement had not been set aside for small business, any challenge to such was required to be protested before the due date for the receipt of proposals. 4 C.F.R. § 21.2(a)(1). The protester’s attempt now to challenge the solicitation’s set-aside provision--or lack thereof--is unquestionably untimely and will not be considered. *Id.*; *Tribologik Corp.*, B-417532, Aug. 2, 2019, 2019 CPD ¶ 284 at 6 n.9 (dismissing protester’s argument that the procurement should have been set aside for small business concerns as an untimely challenge to the terms of the solicitation).

Remaining Challenges

LCE Newport Beach’s third protest ground challenges the adequacy of the debriefing the firm received from the Navy. Protest at 1. Specifically, the protester argues that the debriefing contained “redacted information that does not convey any meaningful discussion,” in alleged violation of the Freedom of Information Act and the FAR. *Id.* Our Office will not review a protester’s contention that the debriefing it received was inadequate because the adequacy of a debriefing is a procedural matter concerning an agency’s actions after award, which are unrelated to the validity of the award itself. *Symplicity Corp.*, B-297060, Nov. 8, 2005, 2005 CPD ¶ 203 at 4 n.4. As such, this allegation is dismissed accordingly.

Finally, the protester “question[s] whether or not LCE Newport Beach was fairly treated and or can be considered a qualified supplier under what appears to be a ‘Lessor Qty’ Provider.” Protest at 2. Our 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) and (f). These requirements contemplate that the protester will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of

improper agency action. *Delta Risk, LLC*, B-416420, Aug. 24, 2018, 2018 CPD ¶ 305 at 10.

Here, the protester has not asserted that the agency treated offerors unequally, but rather, simply “questions” whether LCE Newport Beach was “fairly treated” or whether the firm could be considered a “qualified supplier” for a portion of the effort. Protest at 2. This bare assertion, without any substantiation or explanation, is not sufficient evidence to establish the likelihood that the protester will prevail in its claim of improper agency action. *PricewaterhouseCoopers Pub. Sector LLP, supra* (finding bare assertion to be unsupported speculation that does not meet standard for a “legally sufficient protest”). This allegation is similarly dismissed. 4 C.F.R. § 21.1(c)(4) and (f).

The protest is dismissed.

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General Counsel