



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. No party requested redactions; we are therefore releasing the decision in its entirety.

Decision

Matter of: KSC, Inc., d/b/a Cups and Company

File: B-422597

Date: July 30, 2024

John Shin, Esq., and Yue He, Esq., Shin Legal, PLLC, for the protester.
Robert Carson, Esq., Lloyd Subin, Esq., and John Ward, Esq., Architect of the Capitol, for the agency.
Cosette Vincent, Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly failed to provide a required debriefing is dismissed because GAO will not consider protests based on the content of, or failure to provide, a debriefing because the alleged violation does not affect the award of the challenged contract.
 2. Protest that agency took actions that unfairly favored the awardee is dismissed where the protester is not an interested party because the record demonstrates that a third offeror's proposal was in line for award ahead of the protester's, and the protester does not challenge the evaluation of either that firm's or the protester's own proposal.
-

DECISION

KSC, Inc., doing business as Cups and Company, of Vienna, Virginia, protests the award of a contract to Restaurant Associates, LLC, of New York, New York, under request for proposals (RFP) No. AOCSSB23R0060, issued by the Architect of the Capitol (AOC) to provide food services at the Everett Dirksen Senate Office Building in Washington, D.C.¹ The protester contends that the competition was unfair, and that the AOC has unjustifiably refused to provide a debriefing.

¹ AOC is not a federal agency within the purview of our Bid Protest Regulations, 4 C.F.R. § 21.5(g), but the agency has agreed to have our Office consider bid protests challenging its procurements. 50 Fed. Reg. 30,293 (July 25, 1985); see Bid Protest Regulations, 4 C.F.R. § 21.13(a).

We dismiss the protest.

BACKGROUND

The RFP, issued on September 29, 2023, sought proposals to operate a retail food service outlet within the Dirksen Senate Office Building in a space referred to as the American Grill for an 8-year period beginning in 2025.² The RFP requested electronic proposals in two parts: a technical proposal, and a separate qualifications/standard form 33/financial offer part. AR, Tab 2, RFP section L at 1-2. The contract was to be awarded to the firm whose proposal was most advantageous to the government under four factors: technical approach, corporate capabilities, past performance, and financial schedules. AR, Tab 3, RFP section M at 2-3.

The RFP provided that the evaluation under the technical approach and corporate capabilities factors would result in the assessment of adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable. AR, Tab 3, RFP section M at 4-5. As relevant to the protest, a marginal rating would be applied to a proposal that

does not meet all requirements and includes strengths, weaknesses, significant weaknesses and/or deficiencies where the strengths are outweighed by the weaknesses and/or deficiencies. The risk of unsuccessful performance is high as the [p]roposal does not demonstrate an understanding of requirements and can be expected to result in unsatisfactory performance.

Id. at 5.

Additionally, the RFP stated that “[o]fferors who rate below Acceptable under Factors 1 [technical approach] or 2 [corporate capabilities] will not be eligible for award . . .” and would not be evaluated further. *Id.*

The RFP also provided the following instructions about submission of proposals:

Proposals are due Friday, November 17, 2023, at 12:00 noon ET.
Proposals must be emailed to the Contracting Officer at
[name]@aoc.gov. . . . All submissions in response to this RFP shall be
valid for 180 days.

AR, Tab 2, RFP section L at 10.

² Restaurant Associates is currently a food service contractor in the Dirksen building, but its contract does not include operating the American Grill. The agency intends to “provide the infrastructure and buildout of the [American Grill] space pursuant to the [c]ontractor’s approved food service concept of operations.” Agency Report (AR), Tab 9, RFP Statement of Work at 2; Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 2-4.

As provided in the RFP, AOC held a pre-proposal conference and site visit on October 19, for which KSC registered but did not attend. COS/MOL at 4. Four offerors, including KSC and Restaurant Associates, submitted proposals by the November 17 deadline for receipt of proposals. Between then and February 5, 2024, the agency convened an evaluation panel that proceeded to evaluate the proposals under the first two evaluation factors.

The AOC evaluators evaluated KSC's proposal as marginal under both the technical approach and corporate capabilities factors, but also noted that the firm's proposal appeared to have expired because the firm had expressly stated that the proposal was valid for 60 days from the due date for proposals (*i.e.*, valid through January 16, 2024), rather than for 180 days as the RFP required. AR, Tab 12, Recommendation for Award Memorandum at 3.

The evaluators assessed ratings of good under both the technical approach and corporate capabilities factors to the proposal submitted by Restaurant Associates. *Id.* A third offeror, Firm A, was rated acceptable under the technical approach factor and good under the corporate capabilities factor. *Id.*; COS/MOL at 6.

The contracting officer then performed a tradeoff between the proposals from Restaurant Associates and Firm A--the two offerors whose proposals were rated acceptable or better--and concluded that the proposal from Restaurant Associates would provide the best value to the government. *Id.* The contracting officer conducted a responsibility survey and made a determination that Restaurant Associates was responsible. *Id.* On May 10, the AOC awarded the contract to Restaurant Associates and notified KSC. *Id.*; AR, Tab 6, Email from Contracting Officer to KSC at 1.

On May 14, counsel for KSC sent an email to the contracting officer requesting a debriefing. The contracting officer responded by email on May 16, offering a debriefing, but a few minutes later rescinded the debriefing offer. KSC then filed this protest with our Office.

DISCUSSION

KSC's protest raises two issues. First, the protester argues that the AOC has improperly refused to provide a debriefing despite what the firm contends was a timely request. Protest at 3-4. Second, the firm contends that Restaurant Associates was allowed to have access to the space where the pending contract is to be performed, which resulted in that firm having an unfair advantage in this competition. *Id.* at 1. KSC argues that permitting Restaurant Associates to use space designated for performance of the pending contract shows the agency treating offerors unequally and demonstrating "bias, favoritism and impropriety." Comments at 4-5.

Denial of Requested Debriefing

Whether or not KSC timely requested a debriefing, the protester's complaint that the agency failed to provide it a debriefing is not an issue our Office will consider. Whether

an agency provides a debriefing, and challenges to the adequacy of a debriefing, are issues that our Office will not consider because the scheduling and conduct of a debriefing is a procedural matter that does not involve the validity of an award. *Ideal Sol., LLC*, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 3 n.2. Accordingly, we dismiss this aspect of the protest.

Interested Party

The agency disputes KSC's allegation that it was improper or unfair to allow Restaurant Associates limited access to the American Grill space to prepare coffee, which AOC contends only occurred after proposals were submitted and only when a government-furnished coffeemaker that the firm uses to perform its incumbent contract was inoperative or being repaired. COS/MOL at 6-7. But even if KSC could show that AOC's actions were improper, the agency argues, the protest should be dismissed because KSC is not an interested party. In particular, the AOC contends that Firm A's proposal was evaluated as being next-in-line for award after Restaurant Associates, not KSC's proposal. Additionally, the protester has not challenged either the evaluation of its own proposal as marginal under both of the first two factors, or the evaluation of Firm A's as superior to KSC's under those factors. Accordingly, the agency contends that the protester lacks the direct economic interest required to maintain a challenge to the award. COS/MOL at 9.

In response, KSC argues that it should be considered an interested party because Firm A has not filed a timely protest. Comments at 2. In the protester's view, the lack of a protest by Firm A demonstrates that firm is no longer pursuing the contract, thereby moving KSC to next-in-line for award after Restaurant Associates. *Id.*

Under the bid protest provisions of the Competition in Contracting Act, 31 U.S.C. §§ 3551-3557, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *RELM Wireless Corp.*, B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. *Id.*

The protester has not challenged the intervening offer from Firm A that would precede the protester's in eligibility for award under this solicitation, so KSC lacks the direct economic interest required to maintain a protest. We reject KSC's suggestion that an intervening offeror who elects not to file a protest forfeits its next-in-line status to a

lower-ranked offeror. Accordingly, we conclude that KSC is not an interested party to pursue its protest.

The protest is dismissed.³

Edda Emmanuelli Perez
General Counsel

³ Although KSC also argues that the proposal from Restaurant Associates had expired before the agency awarded the contract, the record undermines this claim. Our review shows that Restaurant Associates filled in block 12 on standard form 33 (SF33) to specify its proposal was valid for 180 calendar days from the proposal due date of November 17, 2023, thereby making its proposal valid through May 15, 2024. AR, Tab 5, Restaurant Associates Proposal SF33 at 1. Contrary to KSC's claim, the proposal from Restaurant Associates had not expired when the contract was awarded on May 10.