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Decision

Matter of: SOFITC3, LLC

File: B-423083.3

Date: December 6, 2024

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DIGEST

Protest challenging the scope of the agency’s corrective action taken in response to previous post-award protests is dismissed as legally insufficient where the protester’s allegations are based on impermissible speculation or a facially unreasonable interpretation of the solicitation’s evaluation scheme.

DECISION

SOFITC3, LLC, a small business of Piscataway, New Jersey, protests the scope of the agency’s proposed corrective action announced in response to SOFITC3’s previous protest challenging the issuance of a task order to Delviom, LLC, a small business of Ashburn, Virginia, under request for quotations (RFQ) No. 70RTAC24Q0000089, issued by the Department of Homeland Security (DHS), for cybersecurity governance and compliance.

We dismiss the protest because, as filed with our Office, it does not establish a valid basis for challenging the scope of the agency’s proposed corrective action.

BACKGROUND

Relevant to the issues presented in this protest, the RFQ, which was issued on August 20, 2024, and subsequently amended four times, contemplated a multi-phased quotation and evaluation process. B-423083.2, Electronic Protest Docketing System (Dkt.) No. 9, Req. for Dismissal, exh. 3a, RFQ Amend. 2, Attach. 1, at 6-19. In phase 1, vendors were required to provide certain administrative information, including evidence that the prime contractor or all teaming partners proposed in a contractor team

arrangement (CTA) possess active facility clearance at the top secret level. *Id.* at 7. Following the agency's phase 1 evaluation, vendors would receive a "mandatory [d]own [s]elect [n]otification." Vendors receiving a pass rating from the agency would be invited to proceed to phase 2 quotation submission, while vendors receiving a fail rating would be notified by the agency that they were ineligible for award and removed from further consideration. *Id.*; see also *id.* at 16.

In phase 2, those vendors that received a pass rating for phase 1 were to provide relevant prior corporate experience information for the prime contractor or all teaming partners proposed in a CTA. *Id.* at 8. Following the agency's phase 2 evaluation, all vendors would receive an "[a]dvisory [d]own [s]elect [n]otification." Unlike the mandatory phase 1 down selection notification, where vendors would either be permitted to remain in the competition or would be excluded from further participation, the phase 2 down selection notification would only be a recommendation whether to proceed with a phase 3 submission based on whether the vendor was evaluated as being among the most highly rated vendors under phase 2. Specifically, the RFQ explained that:

After the Government has completed Phase 2 evaluations, all [vendors] will be notified in writing by the [contracting officer] of the Government's advisory recommendation to proceed or not to proceed with Phase 3 submissions. [Vendors] who are rated most highly for Factor 2 will be advised to proceed to Phase 3 of the [vendor] submission process. [Vendors] who were not among the most highly rated will be advised that they are unlikely to be viable competitors, along with the general basis for the Government's advisory recommendation. The intent of this advice is to minimize development costs for those [vendors] with little to no chance of receiving an award. However, the Government's advice will be a recommendation only, and those [vendors] who are advised not to proceed may elect to continue their participation in the procurement.

Id. at 8-9.

In phase 3, vendors were to submit quotations addressing four additional factors: (a) management and staffing approach; (b) technical qualifications and approach; (c) cybersecurity readiness; and (d) price. *Id.* at 9-14. Following the agency's phase 3 evaluation, the agency was to conduct a best value tradeoff where the non-price factors, when combined, were more important than price. *Id.* at 15. As to the non-price factors, their relative importance in descending order was: (1) facility clearance; (2) prior corporate experience; (3) management and staffing approach; (4) technical qualifications and approach; and (5) cybersecurity readiness. *Id.*

Following the submission and evaluation of phase 3 quotations, the agency ultimately evaluated Delviom's quotation as offering the best value and issued the order to Delviom. On October 10, 2024, SOFITC3 and another disappointed vendor respectively filed protests challenging the agency's evaluation of quotations and

resulting award decision. Prior to the due dates for the agency reports responding to the two protests, the agency notified our Office of its intent to voluntarily take corrective action in response to the protests. Specifically, the agency provided that it would reevaluate Delviom's quotation under the prior corporate experience phase 2 factor and make a new award decision considering the new evaluation results. B-423083.2, Dkt. 21, Notice of Corrective Action and Req. for Dismissal at 1. Additionally, while noting that the agency did "not anticipate taking corrective action with respect to any other aspect of the [a]gency's evaluation," it nevertheless "reserve[d] the right to ensure all other aspects of the procurement are in accordance with law and regulation." *Id.*

On November 12, SOFITC3 filed objections to the agency's corrective action asserting two principal bases. First, SOFITC3 objected that the agency failed to commit to address the protest allegations challenging the agency's evaluation of the protester's own quotation. B-423083.2, Dkt. 22, Obj. to Notice of Corrective Action, at 1-2. Second, the protester contended that it was improper for the agency to reevaluate Delviom's corporate experience under phase 2, arguing that "Phase 2 was announced as a gating review that would result in a recommendation whether to proceed to Phase 3," and that the proposed reevaluation of Delviom's corporate experience under the phase 2 evaluation factor would "abandon[] the scheme set out in the RFQ and substitute[] a stream-lined process that cannot be reconciled with the announced procurement process." *Id.* at 2-3.

On November 12, our Office dismissed SOFITC3's protest as academic based on the agency's proposed corrective. *SOFITC3, LLC*, B-423083.2, Nov. 12, 2024 (unpublished decision). As to the protester's first objection, we explained that the agency's stated intent to reevaluate Delviom's quotation and render a new source selection rendered academic the protester's challenge to the agency's prior award decision; we further explained that to the extent that the protester was dissatisfied with the agency's reevaluation and new award decision, it could reassert any of its previously asserted challenges in a new protest filed in accordance with our Bid Protest Regulations at that time. *Id.* at 1-2.

As to the protester's second objection, we similarly found that the objection failed to demonstrate that the agency's proposed reevaluation and issuance of a new award were insufficient to render academic the protester's challenge to the initial, but to be superseded, award decision. We additionally noted, while indicating that the protester could file a protest challenging the scope of the agency's intended corrective action, that it appeared that the protester overstated the import of the agency's phase 2 advisory down selection notification process. *Id.* at 2-3. This protest followed.

DISCUSSION

The protester raises two principal challenges to the scope of the agency's proposed corrective action in this protest. First, the protester alleges that because the agency ostensibly identified concerns with its evaluation of Delviom's quotation under the corporate experience factor, the agency must have necessarily committed similar errors

in the evaluation of other vendors' experience and, therefore, the agency should commit to conducting a more far-reaching reevaluation of quotations. B-423083.3, Dkt. 1, Protest, at 3. Second, SOFITC3 largely repeats its objection that the agency is not permitted to reevaluate corporate experience under the phase 2 evaluation while "ignor[ing] the knock-on effects of that different Phase 2 evaluation on subsequent phases." *Id.* at 4. In this regard, the protester contends that if "Delviom proposed no relevant prime contractor experience" then "[r]ejection of its proposal [sic] would be appropriate." *Id.*

For the reasons that follow, we find that neither line of argument provides a legally sufficient basis to object to the scope of the agency's proposed corrective action. The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. 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, 4 C.F.R. § 21.1(c)(4) and (f), 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. These requirements contemplate that protesters 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. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

As to the protester's first argument that the agency's identification of potential concerns with the evaluation of Delviom's prior corporate experience necessarily demonstrates that the agency's evaluation of other vendors' experience was similarly flawed, we find that the protester's allegations are based on impermissible speculation and conjecture. We have repeatedly held that unsupported assertions that are mere speculation on the part of the protester do not provide an adequate basis of protest. *See, e.g., Dust Busters Plus, LLC*, B-419853.7, July 26, 2021, 2021 CPD ¶ 264 at 3 n.4; *Saalex Sols., Inc.*, B-418729.3, July 23, 2021, 2021 CPD ¶ 298 at 5; *Strategic Res., Inc.*, B-419151, Dec. 11, 2020, 2020 CPD ¶ 399 at 11 n.9. Absent any credible allegations supporting its bare assertion of widespread error in the evaluation of other vendors' corporate experience, the protester's bare assertions, without more, fail to state legally sufficient bases of protest.¹

¹ Additionally, we note that while the agency has indicated it does not intend at this time to reevaluate other vendors' quotations, it reserved the right to take other corrective action as it deems warranted. *See* B-423083.2, Dkt. 21, Notice of Corrective Action and Req. for Dismissal at 1. To the extent that the protester merely anticipates adverse action by the agency in failing to address other concerns identified during the corrective action, such arguments are premature. Our Office assumes that agencies will conduct procurements in a fair and reasonable manner in accordance with the terms of the solicitation, and we will not consider a protest allegation which speculates that an agency will not evaluate quotations in the manner set forth in the solicitation. *Booz*

(continued...)

We similarly find that the protester's objections to the agency revisiting its phase 2 corporate experience evaluation fails to state a viable basis of protest. There are at least two fundamental problems with the protester's arguments. First, as with its objection to the agency's corrective action during the prior protest, the protester's current protest suggesting that Delviom's quotation should have been "rejected" following the phase 2 corporate experience evaluation betrays a critical misunderstanding of the advisory down selection notification procedures. As the RFQ unambiguously provided, quotations would not be rejected after the phase 2 evaluations; rather, the agency would merely make a recommendation whether the vendor was evaluated as being among the most highly rated quotations and, thus, whether they should proceed to phase 3. B-423083.2, Dkt. 9, Req. for Dismissal, exh. 3a, RFQ Amend. 2, Attach. 1, at 8-9 ("However, the Government's advice *will be a recommendation only*, and those [vendors] who are advised not to proceed *may elect to continue their participation* in the procurement.") (emphasis added). Thus, the protester's argument that the agency could or should have rejected quotations following the phase 2 evaluation misreads the solicitation and fails to state a legally sufficient basis of protest.

Second, the protester fails to credibly allege how the phase 2 corporate experience evaluation factor supposedly had "knock-on effects" with respect to the phase 3 evaluation. In this regard, the phase 2 evaluation focused on the stand-alone prior corporate experience factor, whereas the phase 3 evaluation focused on the separate factors of: (a) management and staffing approach; (b) technical qualifications and approach; (c) cybersecurity readiness; and (d) price. B-423083.2, Dkt. 9, Req. for Dismissal, exh. 3a, RFQ Amend. 2, Attach. 1, at 9-14.

We further find unpersuasive the cases cited by the protester for the proposition that the agency's actions here materially deviated from the solicitation's evaluation scheme because they are readily and materially distinguishable. First, in *Africa Automotive Distribution Services, Ltd.*, B-418246.6, Aug. 24, 2021, 2021 CPD ¶ 308, we sustained a protest challenging the agency's reevaluation of offerors' proposed prices as part of corrective action taken in response to an earlier protest. We sustained the protest because the agency's reevaluation used a fundamentally different method for calculating transportation costs than announced in the solicitation. *Id.* at 7-8 (sustaining protest where agency utilized estimated port-to-port rates as opposed to requesting the lowest shipping method and price from the U.S. Transportation Command based upon the offeror's specific shipping characteristics). Here, the agency has not announced that it will evaluate corporate experience using different evaluation criteria than those

Allen Hamilton, Inc., B-414822.5, Oct. 13, 2017, 2017 CPD ¶ 315 at 4. In this regard, to the extent that the protester is dissatisfied with the agency's reevaluation and new award decision, it may file a protest in accordance with our Bid Protest Regulations raising those objections at that time.

enumerated in the solicitation. Thus, this case is readily distinguishable from the facts presented in *Africa Automotive*.² *Id.*

Similarly, the protester's reliance on *Softrams, LLC; Chags Health Information Technology, LLC*, B-419927.4 *et al.*, Feb. 7, 2022, 2022 CPD ¶ 57, is unavailing because that case involved materially different factual circumstances than those presented here. In that case, our Office sustained a protest where the agency's source selection decision unreasonably relied upon a portion of the awarded quotation submitted by a vendor configuration that had been eliminated from the competition. *Id.* Specifically, a prime contractor-subcontractor team submitted a phase 1 quotation, but subsequently established a CTA composed of the same underlying firms to participate in phase 2. *Id.* Following several protests, the CTA was eliminated from the competition because it did not submit a phase 1 quotation. *Id.* During corrective action, the original prime contractor-subcontractor team was permitted to submit revised phase 1 and phase 2 quotations, but was not permitted to make a new required phase 2 oral presentation; rather, the agency relied on the oral presentation previously provided by the CTA prior to the CTA's elimination from the competition. *Id.* We sustained the protest because the agency relied on a quotation and an oral presentation made by two different prime vendors in making award. *Id.*

As recounted above, the factual circumstances of *Softrams*, are patently distinguishable from the facts presented here. Unlike that case, SOFTIC3 does not allege that the corporate identity of Delviom as the prime offeror has undergone a material change and that such change will not reasonably be accounted for in the agency's reevaluation or issuance of a new source selection decision.

As set forth above, this protest does not include sufficient information to establish the likelihood that the agency in this case violated applicable procurement laws or regulations. The protest therefore is dismissed without further action. See 4 C.F.R. § 21.5(f).

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

² As noted above, we will not assume that the agency's corrective action reevaluation will deviate from the terms of the solicitation, and any such intimations are clearly premature at this juncture. *Booz Allen Hamilton, Inc., supra.*