



Decision

Matter of: OSST, LLC

File: B-423223

Date: February 5, 2025

James S. Allen, for the protester.

Colby L. Sullins, Esq., Defense Health Agency, for the agency.

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

DIGEST

Protest challenging agency's rejection of an unsolicited proposal is dismissed where GAO will not generally review a protest based on requiring an agency to accept an unsolicited proposal and procure from the firm on a sole-source basis.

DECISION

OSST, LLC, d/b/a Ocular Surface Support & Training, of Lexington, Kentucky, protests the Defense Health Agency's (DHA) decision to reject OSST's unsolicited proposal. The protester alleges that the agency's evaluation of its unsolicited proposal was flawed; emphasizes the unique nature of its approach to vision restoration services; argues that the agency prematurely rejected its proposal because it did not initiate discussions prior to the rejection, and essentially contends that the agency should have more seriously considered, and likely issued, a sole-source award to OSST. In its response, DHA explains that it properly evaluated and rejected the protester's unsolicited proposal.

We dismiss the protest.

OSST submitted an unsolicited proposal to the agency to set up a "centralized, federal referral transplant center for government patients" to receive care at an outside facility in Kentucky.¹ Protest, exh. A, Unsolicited Proposal for Training and Education for Sight

¹ The proposal listed, as items to be delivered, "[t]raining and educational services to ensure providers get patients to the right facility"; an annual report about the training

(continued...)

Restoration at 4. The proposal described its goal as educating government doctors and training transplant coordinators in a particular approach to vision restoration. *Id.* at 5. The protester presented the proposal to DHA on October 4, 2024. Protest at 1. On December 2, the agency sent OSST a letter notifying the firm that its proposal did not demonstrate an innovative, unique, or meritorious approach, citing Federal Acquisition Regulation (FAR) subpart 15.6², and explaining that DHA currently has a system in place for referrals “of active-duty patients to [] stand-alone facilities for care.” Protest, exh. B, Rejection Memorandum at 1. The letter also asserted that OSST’s proposal did not advance DHA’s interests, such as directly improving the medical readiness of the force, given the “low number” of service members requiring the specific vision restoration services OSST proposed. *Id.* Finally, the agency informed OSST that the proposal’s cost was an issue:

As the proposal is written, the cost is not realistic to DHA. This proposal would require \$3.3 million per year, to train a small number of individuals to be able to refer patients to an outside facility for treatment. As the problem this proposal seeks to resolve is not commonly encountered within the active-duty population, this is not a realistic expenditure for DHA. In addition to those reasons, there is currently no available funding for this project.

Id.

On December 12, OSST submitted this protest.

The decision to make an award based upon an unsolicited proposal is in the agency’s discretion, and then only where the requirements of FAR section 15.607 are met. *InGenesis, Inc.*, B-412101.2, Mar. 28, 2016, 2016 CPD ¶ 102 at 5 n.9; *Rante Corp.*, B-411188, June 1, 2015, 2015 CPD ¶ 166 at 2. As we have explained, FAR section 15.607 sets forth those circumstances where any agency is required to reject an unsolicited proposal; it does not follow that, in all other circumstances, the agency must accept an unsolicited proposal. *InGenesis, Inc.*, *supra*. Nevertheless, OSST challenges various aspects of the agency’s evaluation and disagrees with the agency’s determination that its proposal was neither innovative, unique, nor meritorious.

We find no basis to review the agency’s determinations here. Given that one of the objectives of our bid protest function is to ensure full and open competition, we consider it inappropriate, generally, to review a protest that would mandate an agency to procure from a particular firm on a sole-source basis. *See Rante Corp.*, *supra*; *S.T. Research Corp.*, B-231752, Aug. 16, 1988, 88-2 CPD ¶ 152 at 1-2. Since OSST’s protest fails to provide our Office with a basis to deviate from this general rule, we decline to consider

and education services provided; and a proposed plan for a second phase, to be delivered in 2027. Protest, exh. A, at 19.

² Subpart 15.6 of the FAR sets forth policies and procedures related to unsolicited proposals, including criteria for acceptance or rejection thereof.

the protester's allegations.³ 4 C.F.R. §§ 21.1(c)(4), (f) (protest must include a detailed statement of the legal and factual grounds for protest, and the grounds stated must be legally sufficient).

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

³ Further, we note the agency also argues that since the requirements of FAR section 15.607(b) were not met, the FAR precludes the agency from making an award to OSST. Req. for Dismissal at 2; see *Rante Corp.*, *supra*. These FAR requirements allow a contracting officer to negotiate on a sole-source basis only when certain criteria are met, with the relevant criterion here being that the "agency technical office sponsoring the contract furnishes the necessary funds." FAR 15.607(b)(3). DHA asserts that it does not have available funding for OSST's proposed project, as stated in its rejection letter, preventing the agency from commencing negotiations with the protester regarding its proposal. Req. for Dismissal at 2-3. The agency's argument further supports our dismissal of OSST's allegations.