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# Decision

**Matter of:** SteerBridge Strategies, LLC

**File:** B-422831.2; B-422831.3

**Date:** December 31, 2024

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## DIGEST

1. Protest that the agency unreasonably failed to cancel a solicitation containing unduly restrictive requirements and resolicit is dismissed as untimely where the protester failed to protest the terms as unduly restrictive prior to the initial due date for quotations.
  2. Protest that the agency failed to perform adequate market research is dismissed where the protester failed to raise the argument within 10 days of when it knew, or should have known, the basis for protest.
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## DECISION

SteerBridge Strategies, LLC, a service-disabled, veteran-owned small business (SDVOSB) of Vienna, Virginia, protests the agency's implementation of corrective action under request for quotations (RFQ) No. 36C10D24Q0195, issued by the Department of Veterans Affairs (VA), for modern claims processing support services. The protester contends the VA unreasonably decided to amend, rather than cancel, the solicitation. The protester argues that this decision, in effect, created an improper sole-source procurement. In its supplemental protest, the protester contends that the VA's market research was inadequate, resulting in the VA's failure to recognize that the solicitation was unduly restrictive of competition.

We dismiss the protest.

## BACKGROUND

On July 30, 2024, the VA issued the first iteration of the RFQ as a set-aside for small businesses under the General Services Administration's Federal Supply Schedule in accordance with the procedures of Federal Acquisition Regulation (FAR) subpart 8.4. Agency Report (AR), Tab 3, RFQ at 1, 61.<sup>1</sup> The RFQ contemplated the issuance of a fixed-price task order with a base period of 12 months and four 1-year option periods. AR, Tab 4, Performance Work Statement (PWS) at 4-5. The due date for initial quotations, as amended, was September 6. AR, Tab 4.4, RFQ amend. 0004 at 1.

The solicitation provided for the evaluation of quotations based on the following factors: technical, past performance, and price. RFQ at 61-63. The technical factor consisted of two elements: technical approach and key personnel. *Id.* at 62-63. For technical approach, vendors were to provide written narratives describing their approach for hospitalization reporting and medical code mapping, as well as their support for a disability benefits questionnaire intake portal. *Id.* at 62. For key personnel, vendors were to submit resumes for key personnel currently employed by the vendor. *Id.* For past performance, vendors were to submit up to three past performance questionnaires for previous contracts, task orders, or purchase orders that were similar in scope, size, and complexity. *Id.* at 63. For price, vendors were to complete a price schedule attached to the solicitation for the entire period of performance. *Id.*

The solicitation provided for award on a best-value tradeoff basis where technical was more important than past performance and past performance was more important than price. *Id.* at 64. When combined, the non-price factors were more important than price. *Id.*

SteerBridge filed a pre-award protest with our Office on August 14, arguing that the VA failed to abide by the VA's Rule of Two.<sup>2</sup> AR, Tab 5, SteerBridge Initial Protest at 2-3. In that protest, SteerBridge argued that the VA failed to perform adequate market research prior to issuing the solicitation. *Id.* SteerBridge contended that, had the VA conducted adequate market research, the VA would have had a reasonable expectation that two or more SDVOSBs could perform the requirement at a fair and reasonable price. *Id.* In response to SteerBridge's protest, the VA informed our Office that it would take corrective action. AR, Tab 6, Notice of Corrective Action at 1. Specifically, the VA

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<sup>1</sup> All citations to the record reference the Adobe PDF page number.

<sup>2</sup> SteerBridge's protest concerned the requirements under the Veterans Benefits, Health Care, and Information Technology Act of 2006 (VA Act), 38 U.S.C. §§ 8127-8128. Specifically, the VA Act requires the VA to set aside acquisitions for veteran-owned small businesses (VOSBs) or SDVOSBs whenever there is a reasonable expectation that the VA will receive offers from at least two VOSBs or SDVOSBs capable of performing the required work, and that award can be made at a fair and reasonable price. 38 U.S.C. § 8127(d); *Veteran Shredding, LLC*, B-417399, June 4, 2019, 2019 CPD ¶ 210 at 3. We refer to this requirement as the VA's Rule of Two.

stated that it would cancel the solicitation and resolicit it as a set-aside for SDVOSBs. *Id.* In light of the VA's corrective action, we dismissed SteerBridge's protest as academic on September 3. *SteerBridge Strategies, LLC*, B-422831, Sept. 3, 2024 (unpublished decision).

### Corrective Action and Current Protest

Following our dismissal of SteerBridge's initial protest, the VA issued amendment 0006 on September 12, which changed the solicitation from a small business set-aside to an SDVOSB set-aside. AR, Tab 4.6, RFQ amend. 0006 at 1. The VA explained that although the notice of corrective action filed with our Office provided that the VA would cancel the solicitation, it instead amended the solicitation for administrative reasons. AR, Tab 2, Contracting Officer's Statement (COS) at 2. The agency further explained that, aside from changing the solicitation to an SDVOSB set-aside, amendment 0006 made no other substantive changes to the solicitation. *Id.* at 3. The new due date for quotations, as amended, was 2:00 p.m. on October 2, 2024. AR, Tab 4.7, RFQ amend. 0007 at 1.

SteerBridge filed this pre-award protest with our Office prior to 2:00 p.m. on October 2. Protest at 1.

### DISCUSSION

SteerBridge argues that the solicitation contains requirements that only the incumbent contractor--which is not an SDVOSB--can meet, and that the decision to amend the solicitation, rather than canceling it and resoliciting the effort, effectively established a sole-source procurement for the SDVOSB that teams with the incumbent contractor. *Id.* at 5. In its supplemental protest, SteerBridge contends that the VA did not conduct adequate market research in implementing its corrective action. Comments and Supp. Protest at 3. Had the VA conducted proper market research, SteerBridge argues that the agency would have discovered that the only SDVOSBs that can compete under the current requirements are the SDVOSB firms that are teaming with the current incumbent and an SDVOSB that was a subcontractor on the incumbent contract. According to the protester, these facts demonstrate that the agency needs to issue a new solicitation.<sup>3</sup> *Id.*

The agency requests dismissal of the protest on the basis that it constitutes an untimely challenge to the terms of the solicitation. Memorandum of Law (MOL) at 2-4.

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<sup>3</sup> We note that the protester, in its protest filed on October 2, argued that the current procurement is effectively a sole-source procurement to the SDVOSB that teams with the incumbent. Protest at 5-8. In its comments and supplemental protest, however, the protester shifts its argument, contending that the procurement is restrictive of competition because only the SDVOSB teaming with the incumbent, and the SDVOSB firm that was a subcontractor under the incumbent contract, can compete. Comments and Supp. Protest at 5.

Specifically, the agency argues that the requirements that SteerBridge challenges in the current protest, such as the requirement that vendors demonstrate experience with specific products and programs, were present in the solicitation at the time SteerBridge filed its initial protest on August 14. *Id.* at 2. Because SteerBridge did not challenge the terms of the solicitation prior to the initial due date for quotations (other than to argue that the solicitation should have been set aside for SDVOSBs rather than SBs), the agency argues that its current challenge is untimely. *Id.* SteerBridge responds that its protest is not untimely because amendment 0007, which the agency issued after the due date for initial quotations, incorporated improprieties into the solicitation that were not present in the initial solicitation. Comments and Supp. Protest at 4-5. According to SteerBridge, the time for filing the current protest was prior to the amended due date for quotations on October 2. Comments and Supp. Protest at 4-5; see 4 C.F.R. § 21.2(a)(1).

Our Bid Protest Regulations require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial quotations be filed before that time. 4 C.F.R. § 21.2(a)(1). Conversely, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested not later than the next closing time for receipt of quotations following the incorporation. *Id.*

We agree that SteerBridge's protest is untimely. Although SteerBridge is correct that the time for challenging improprieties that did not exist in the initial solicitation but were subsequently incorporated into the solicitation is any time prior to the next closing date for quotations, see *id.*, amendment 0007 did not create the problems identified by the protester. Instead, through amendment 0007, the agency responded to questions from vendors concerning the requirements but did not change the requirements. See AR, Tab 4.7, RFQ amend. 0007. For instance, question eighteen challenged the requirement for vendors to demonstrate experience with specific programs, arguing that the requirement provided the incumbent with an unfair advantage. *Id.* at 4. The agency responded that it would not revise the requirement because the required experience was necessary for successful performance. *Id.* at 3. This question and response is representative of the remaining questions and responses in that amendment 0007 did not introduce any new requirements; rather, it confirmed that the requirements would remain the same. Therefore, the time for challenging the terms of the solicitation on the basis that it was unduly restrictive was prior to the due date for initial quotations on August 14. See 4 C.F.R. § 21.2(a)(1); see also *Booz Allen Hamilton, Inc.*, B-422118.2, B-422118.3, July 30, 2024, 2024 CPD ¶ 184 at 4 (stating that an agency's corrective action does not "reviv[e] otherwise untimely protest allegations" where those allegations were not affected by the corrective action). SteerBridge's protest is untimely because it did not challenge the terms until October 2.<sup>4</sup>

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<sup>4</sup> In any event, we note that the agency received four quotations in response to the solicitation. COS at 4.

The agency also requests dismissal of SteerBridge's supplemental protest as untimely because SteerBridge's challenge to the adequacy of the agency's market research is not based on new information. Supp. COS/MOL at 4. Specifically, the agency argues that the argument is timely only if the protester relied on information that it learned from the agency report, which, according to the agency, is not the case here. *Id.* The protester argues that it was aware of the extent of the agency's market research only after the filing of the agency report. Comments on Supp. AR at 1-2.

We agree with the agency that the supplemental protest is untimely. Our Regulations provide that, to be considered timely, a protest must be filed within 10 calendar days of when the protester knew, or should have known, its basis for protest. 4 C.F.R. § 21.2(a)(2). SteerBridge supports its argument that "no new or additional market research was conducted" by citing page two of the contracting officer's statement of facts where the contracting officer stated that "[c]ancelling instead of amending . . . would require all documents, from the market research report . . . to be started from scratch." See Comments and Supp. Protest at 3; see *also* COS at 2. As the agency points out, this statement does not affirm or deny that new market research took place but speaks to a hypothetical situation of what would have happened if the agency canceled the solicitation. Supp. COS/MOL at 4. Because the agency report did not inform SteerBridge of any new information regarding the agency's market research, SteerBridge should have raised this challenge when it filed its initial protest. Its failure to do so renders the current protest untimely.

The protest is dismissed.

Edda Emmanuelli Perez  
General Counsel