



Decision

Matter of: CredoGov

File: B-414389.38

Date: May 31, 2019

James Gunn for the protester.

Wade L. Brown, Esq., and Jonathan A. Hardage, Esq., Department of the Army, for the agency.

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

DIGEST

1. Protest challenging the manner in which a procurement is conducted, as disclosed in the terms of the solicitation, must be filed prior to the closing date for submission of proposals.
 2. Protest based on allegations other than challenges to the terms of a solicitation must be filed within 10 days of the time the protester knew of its alleged bases for protest.
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DECISION

CredoGov, of Irvine, California, protests the Department of the Army's decision to resolicit its requirements for information technology (IT) hardware pursuant to request for proposals (RFP) No. W52P1J-15-R-0122,¹ and also protests the agency's rejection of the proposal CredoGov submitted in response to that solicitation.

We dismiss the protest.

BACKGROUND

On May 3, 2016, the agency issued RFP No. W52P1J-15-R-0122, seeking proposals to provide commercial-off-the-shelf IT hardware, including desktop computers,

¹ The procurement is generally referred to as the third iteration of the Army Desktop Mobile and Computing procurement, or ADMC-3.

workstations, notebooks, and printers. The RFP contemplates award of multiple indefinite-delivery, indefinite-quantity contracts, under which task orders will be issued during a five-year base period and a five-year option period. The procurement has an estimated value of \$5 billion.

In August 2016, proposals were submitted by more than 50 offerors. In February 2017, the agency made nine awards. Thereafter, several unsuccessful offerors filed protests with this Office. In March 2017, the agency advised GAO that it would take corrective action in response to the protests, indicating that it intended to conduct discussions with virtually all of the offerors. Based on that corrective action, GAO dismissed the protests. Thereafter, the agency sent discussion letters to the offerors, including CredoGov, seeking revised proposals.

On or about March 31, 2017, several of the awardees filed protests with the Court of Federal Claims (COFC), challenging the scope of the agency's then-ongoing corrective action. On July 3, 2017, the COFC granted those protests, concluding that the agency's corrective action must be more "narrowly targeted." Dell Fed. Sys., L.P. v. United States, 133 Fed. Cl. 92 (2017). The agency states that, following the COFC's decision in Dell, it attempted to comply with that decision by limiting the submission of revised proposals to "only those offerors whose deficiencies could be resolved through clarifications." Agency Request for Summary Dismissal, Apr. 9, 2019, at 2.

In August 2017, several of the unsuccessful offerors appealed the COFC Dell decision to the Court of Appeals for the Federal Circuit (CAFC). On September 24, 2018, the CAFC reversed Dell, rejecting the lower court's application of a "narrowly targeted" standard of review, and concluding that the Administrative Procedure Act's "rational basis" standard was applicable. In its decision, the CAFC concluded: "The Army may proceed with its proposed corrective action, which we hereby reinstate." Dell Federal Systems, L.P. v. United States, 906 F.3d 982, 998 (Fed. Cir. 2018).

Thereafter, the agency reviewed its requirements, concluding that it needed to make various revisions to the solicitation, and noting that, in light of the extended litigation, it would "only be fair to resolicit with all offerors who responded to the original solicitation." Agency Request for Summary Dismissal, Apr. 9, 2019, at 3. Accordingly, between December 14, 2018 and February 6, 2019, the agency issued various RFP amendments, which revised its requirements, sought revised proposals from all prior offerors, and established February 12, 2019 as the closing date for proposal submission. On that date, proposals were submitted by CredoGov and 46 other offerors.

On March 14, 2019, the agency notified CredoGov that its proposal had been excluded from further consideration in this procurement. On March 27, CredoGov filed this protest.

DISCUSSION

CredoGov first challenges the agency's decision to resolicit its requirements, rather than proceed under the previously-initiated discussions, and further complains that exclusion of its proposal was improper. Neither of CredoGov's protest allegations are timely.

More specifically, CredoGov first complains that the agency "issued [RFP] amendments [after the CAFC decision] . . . and is not following the Court of Federal Claims opinion which reinstated the Army's previous corrective action."² Protest at 3. CredoGov further maintains that "the Army must make awards based on the discussion response and BAFOs [best and final offers] received via the Army's [pre-litigation] corrective actions." *Id.* In short, CredoGov asserts that it was improper for the agency to amend the solicitation and seek revised proposals from all prior offerors because the CAFC's decision provided that "[t]he Army may proceed with its proposed corrective action, which we hereby reinstate." See Dell Federal Systems, L.P. v. United States, 906 F.3d 982, 998 (Fed. Cir. 2018).

Our Bid Protest Regulations contain strict rules for the timely submission of protests. W K Eng'g Int'l, Inc., B-414932, Oct. 13, 2017, 2017 CPD ¶ 316 at 6. Pursuant to these rules, a protest based on alleged solicitation improprieties that are apparent prior to the deadline for submitting proposals must be filed before that deadline. 4 C.F.R. § 21.2(a)(1). A protest allegation that challenges the ground rules the agency has announced for performing corrective action and recompetition is analogous to a challenge to the terms of the solicitation, and must be filed prior to the deadline for submitting new or revised proposals. See, e.g., Veterans Evaluation Servs., Inc., et al., B-412940.26 *et al.*, Jan. 5, 2017, 2017 CPD ¶ 17 at 11; Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 7.

Here, CredoGov's complaint regarding the agency's resolicitation of its requirements constitutes a challenge to the terms of the solicitation amendments that the agency issued between December 14, 2018 and February 6, 2019. As such, CredoGov was required to file a protest challenging that resolicitation prior to February 12, 2019, the closing date for proposal submission. Since this protest was not filed until March 27, CredoGov's challenge to the agency's resolicitation is untimely and will not be considered.

Next, with regard to CredoGov's assertion that the agency improperly eliminated its proposal from the competitive range, the protest is also untimely. As noted above, our Bid Protest Regulations establish strict timeliness rules. Under these rules, a protest based on other than alleged solicitation improprieties must be filed not later than 10 calendar days after the protester knew, or should have known, of the basis for protest. 4 C.F.R. § 21.2(a)(2).

² We assume that CredoGov's complaint in this regard was intended to reference the CAFC's decision, not the COFC's decision.

Here, it is undisputed that CredoGov was notified of its exclusion from the procurement on March 14, 2019.³ Nonetheless, CredoGov failed to file this protest until March 27-- more than 10 days after it knew or should have known of its alleged basis for protest. On this record, CredoGov's complaints regarding exclusion of its proposal are not timely filed.

The protest is dismissed.

Thomas H. Armstrong
General Counsel

³ It is also undisputed that CredoGov did not request a debriefing.