



Decision

Matter of: Information Unlimited, Inc.

File: B-415716.40

Date: October 4, 2019

Herschel Chandler, Information Unlimited, Inc., for the protester. Alexis J. Bernstein, Esq., Colonel Patricia S. Wiegman-Lenz, and Lieutenant Colonel Ryan J. Lambrecht, Department of the Air Force, for the agency. Katherine I. Riback, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Post-debriefing protest of contracting agency's evaluation of protester's proposal is dismissed as untimely where protester did not diligently pursue a debriefing, by waiting approximately 7 months to receive its debriefing.

DECISION

Information Unlimited, Inc. (IUI), a small business of Washington, D.C., protests the exclusion of its proposal from the competition by the Department of the Air Force (AF) under request for proposals (RFP) No. FA8771-17-R-1000 for information technology (IT) services. IUI argues that the agency unreasonably evaluated its proposal under the technical experience factor.

We dismiss the protest as untimely because the protester failed to diligently pursue its protest.¹

The Air Force issued the Small Business Enterprise Application Solutions (SBEAS) RFP on September 28, 2017, which was set aside for small businesses, pursuant to the procedures of Federal Acquisition Regulation part 15. On December 21, 2018, the agency emailed IUI regarding its proposal submitted in response to the SBEAS RFP.

¹ IUI proceeded with its protest pro se, and therefore no protective order was issued in this protest. Accordingly, our discussion of some aspects of the evaluation is necessarily general in nature in order to avoid reference to non-public information.

Agency Summary Dismissal Request, Tab 2, Email from AF to IUI, Dec. 21, 2018 (11:48 a.m.), at 2. In a notice attached to the email, the agency notified the protester that IUI's proposal had been removed from the competition because the agency determined that its technical proposal was unacceptable. The notice also informed IUI of the exact number of points the agency verified for its technical proposal.² Agency Summary Dismissal Request, Tab 3, AF Memorandum to IUI (Dec. 21, 2018). The agency notice also informed IUI that it had three days to request, in writing, a debriefing. Id. at 2. That same day, the protester acknowledged receipt of the agency's email, commented on its technical point score, and requested a debriefing. Agency Summary Dismissal Request, Tab 2, Email from IUI to AF, Dec. 21, 2018 (12:09 p.m.), at 1-2. Later that same day, the agency provided IUI its written debriefing via email as an attachment. Agency Summary Dismissal Request, Tab 2, Email from AF to IUI, Dec. 21, 2018 (3:06 p.m.), at 1.

On February 4, 2019, the protester sent the agency an email, notifying the agency it had not received its debriefing and asking for a timeframe for the debriefing. Request for Summary Dismissal, Tab 6, Email from IUI to AF, Feb. 4, 2019 (10:35 a.m.), at 1. Later that same day, the agency responded to the protester in an email that stated, "[y]ou were provided a pre-award debrief on 21 Dec 2018." Request for Summary Dismissal, Tab 6, Email from AF to IUI (11:42 a.m.), Feb. 4, 2019, at 1.

On August 23, more than 6 months later, the protester again sent the agency an email stating that it had yet to receive its debriefing, and requesting a timeline for when the debriefing would occur. Request for Summary Dismissal, Tab 7, Email from IUI to AF, Aug. 23, 2019 (11:55 a.m.), at 4. That same day, the agency sent an email to the protester stating that it had sent IUI its written debriefing on December 21. Request for Summary Dismissal, Tab 7, Email from AF to IUI, Aug. 23, 2019 (8:14 p.m.), at 3-4. On August 26, the protester replied that the only email that it received from the agency was the agency's Dec. 21 email containing its non-selection notice. Request for Summary Dismissal, Tab 7, Email from IUI to AF, Aug. 26, 2019 (12:58 p.m.), at 3. The protester provided that it had not yet received the agency's debriefing. Id.

On August 30, the agency sent an email to IUI that contained, as an attachment, the agency's email to IUI from December 21, 2018, which contained IUI's pre-award debriefing. Request for Summary Dismissal, Tab 7, Email from AF to IUI, Aug. 30, 2019 (9:41 a.m.), at 1-2. That same day the protester informed the agency by email that it was unable to open the two attachments that contained the pre-award debriefing. Request for Summary Dismissal, Tab 7, Email from IUI to AF, Aug. 30, 2019 (9:30 a.m.), at 1. On August 30, an Air Force official called the protester, explained the steps to open the two attachments in the agency's December 21, 2018 email, which

² The RFP required that proposals had to receive a minimum of 4,200 points in order to be rated technically acceptable under the technical experience factor. Request for Summary Dismissal, Tab 1, Conformed RFP at 165. Citations to the RFP are to the conformed copy provided by the agency.

was provided again as an attachment to the August 30 email, and the protester was then able to review the agency's debriefing. Request for Summary Dismissal at 3. On September 9, the protester filed this protest contesting the agency's technical evaluation of its proposal with our Office. IUI stated in its protest that, "I was informed via an email on August 30 which provided and concluded my required debriefing, that our proposal received a Technical Experience Factor Rating of Unacceptable. We are filing this protest well within the ten day requirement." Protest at 1.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Under these rules, a protest based on alleged improprieties in a solicitation must be filed prior to bid opening or the time established for receipt of proposals, 4 C.F.R. § 21.2(a)(1), and all other protests generally must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). An exception exists for protests that challenge a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. Id. In those cases, protests must be filed no later than 10 days after the date of the debriefing. Id.; see Celeris Systems, Inc., B-416890, Oct. 11, 2018, 2018 CPD ¶ 354 at 2-3. A protester may not passively await information providing a basis for protest. Rather, a protester has an obligation to diligently pursue such information. Cygnus Corp., B-406350, B-406350.2, Apr. 11, 2012, 2012 CPD ¶ 152 at 7. The requirement to diligently pursue the information on which a protest is based includes diligently pursuing a debriefing, which allows protesters to determine whether they have a basis for protest and, if so, the basis. See Professional Rehabilitation Consultants, Inc., B-275871, Feb. 28, 1997, 97-1 CPD ¶ 94 at 2.

Here, we recognize that the protester filed this protest within 10 days of August 30, when it states it first received its written debriefing and first learned the rationale for the agency's technical evaluation of its proposal. However, the record shows that the protester first received the agency's notice of non-selection including attachments, which referenced IUI's technical score, via email, on December 21, 2018.³ IUI received this email and was able to open its attachments. Later that day, IUI timely requested a pre-award debriefing and when, according to IUI, it had not received the requested debriefing it waited 45 days, until February 4, 2019, to contact the agency and inform it of this fact. When it still had not received its requested debriefing, the protester waited more than 6 additional months, until August 23, to follow up with the agency. In essence, the protester waited over 7 months to receive its debriefing. While we acknowledge the protester's argument that IUI did not receive the emails from the agency that included its debriefing, and IUI responded promptly to the emails it did

³ In this regard, the protester's December 21 request for a debriefing included information contained in the attachments to this email.

receive (IUI's Response to Summary Dismissal Request at 2), the fact remains that a protester has an affirmative obligation to diligently pursue information providing a basis for its protest. Professional Rehabilitation Consultants, Inc., *supra*, at 2. Under these circumstances, where IUI first waited 45 days to follow-up with the agency, and then waited over six additional months before contacting the agency again, IUI failed to diligently pursue its protest grounds. Comprehensive Mktg. Sys., Inc., B-238595, May 18, 1990, 90-1 CPD 487 at 1. In view of this lack of diligent pursuit, we dismiss the protest as untimely filed.

The protest is dismissed.

Thomas H. Armstrong
General Counsel