



## Decision

**Matter of:** Best Practices Group

**File:** B-417768

**Date:** July 30, 2019

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Peter J. Whalen for the protester.  
Melody A. Goldberg, Esq., Department of Veterans Affairs, for the agency.  
Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest is dismissed as untimely where it raises the same issues as those presented in a prior agency-level protest that was not timely filed.

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### DECISION

Best Practices Group (BPG), of Renton, Washington, protests the issuance of a purchase order to Quality Registry Services, LLC (QRS), of Manakin Sabot, Virginia, under request for quotations (RFQ) No. VA36C24419Q0619, issued by the Department of Veterans Affairs (VA) for cancer registry services at the Corporal Michael J. Crescenz VA Medical Center (CMC VAMC), in Philadelphia, Pennsylvania. BPG contends that the solicitation was defective and the agency's award decision was improper.

We dismiss the protest because an initial protest to the agency was not timely filed.

The VA issued the RFQ on April 24, 2019, as a combined solicitation/synopsis "in accordance with FAR [Federal Acquisition Regulation] Part 13.5 [Simplified Procedures for Certain Commercial Items]." RFQ at 1. The RFQ, issued on the Federal Business Opportunities (FBO)<sup>1</sup> website ([www.fbo.gov](http://www.fbo.gov)), was set aside for service-disabled

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<sup>1</sup> Publication on the FBO website, which has been expressly designated by statute and regulation as the official public medium for providing notice of contracting actions by federal agencies, constitutes constructive notice of contracting actions. PR Newswire Ass'n, LLC, B-400430, Sept. 26, 2008, 2008 CPD ¶ 178 at 3; CBMC, Inc., B-295586, Jan. 06, 2005, 2005 CPD ¶ 2 at 1.

veteran-owned small businesses, and required the contractor to provide all necessary labor, personnel, equipment, supplies, and materials necessary to maintain the CMC VAMC cancer registry database. Id. at 5.

BPG was among the vendors that submitted quotations by the May 13 closing date. The VA thereafter made award to QRS on June 13, and published notice of the award on FBO that same day.<sup>2</sup> Agency Dismissal Request, exh. 2, FBO Award Posting (June 13, 2019).

On July 1, BPG filed an agency-level protest with the VA. BPG alleged that the RFQ was defective, and that the agency's evaluation of vendors' quotations was improper. Agency Dismissal Request, exh. 4, BPG Agency-Level Protest at 1-3. On July 15, the VA dismissed BPG's protest as untimely, finding that BPG's challenges to the solicitation were not filed before the May 13 closing date and that the remaining protest grounds challenging the award decision had not been filed within 10 days of the June 13 award notice. Agency Dismissal Request, exh. 5, Agency-Level Protest Decision (July 15, 2019). BPG then refiled its July 1 protest with our Office on July 17.<sup>3</sup>

On July 23, the agency submitted a dismissal request asserting that BPG's agency-level protest was not timely filed and, as a result, BPG's July 17 protest to this Office was untimely. Agency Dismissal Request, July 23, 2019, at 1-4. BPG responded to the agency's dismissal request by stating that: it was unfamiliar with the procedures for filing a protest; it was awaiting receipt of an award notice from the VA that would include its appeal rights; and that it promptly filed its protest once it determined that no information was forthcoming. BPG Response to Agency Dismissal Request, July 23, 2019, at 1-2.

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 must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for

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<sup>2</sup> Along with constructive knowledge received by the FBO posting, the protester also acknowledges that it had actual knowledge of the award notice when it explained, "[w]e check the FBO regularly so we knew we were not the vendor of choice as of 6/13." Protest at 3.

<sup>3</sup> BPG's protest was received by our Office on July 16 at 8:05 pm eastern time, and was therefore considered filed the next day. See 4 C.F.R. § 21.0(g).

protest, whichever is earlier.<sup>4</sup> 4 C.F.R. § 21.2(a)(2). Further, a matter initially protested to the contracting agency will be considered timely by our Office only if the initial agency protest was filed within the time limits provided by the Regulations for filing a protest with our Office unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. 4 C.F.R. § 21.2(a)(3).

Here, the record is clear that BPG's July 1 agency-level protest, challenging the award decision, was filed more than 10 days after BPG knew or should have known of its bases of protest. Specifically, BPG acknowledges that it was aware of the award to QRS when it was posted on FBO on June 13. At that time, the protester possessed the information on which its protest is based. Similarly, the record reflects that BPG's protest allegations that challenged the terms of the solicitation were undeniably filed after the May 13 closing date for receipt of quotations. Agency Dismissal Request, July 23, 2019, at 1-4.

Furthermore, neither a protester's unfamiliarity with our regulations, nor its decision to wait for the agency to inform it of its protest rights, provides a basis for suspending our timeliness regulations. Optical Energy Techs., Inc., B-401520, July 13, 2009, 2009 CPD ¶ 153 at 3; Professional Office Ctr., B-229704, Dec. 17, 1987, 87-2 CPD ¶ 607 at 2-3. Both the FAR and our Bid Protest Regulations are published in the Code of Federal Regulations; protesters are charged with constructive notice of their contents. A protester's professed lack of knowledge of these published regulations is not a basis for waiving their requirements. All Destinations, B-233505.3, Dec. 29, 1988, 88-2 CPD ¶ 640 at 1-2.

On this record, we find untimely, both BPG's agency-level protest as well as its challenge to the solicitation, filed after the closing date for receipt of quotations. 4 C.F.R. § 21.2(a)(1), (2). Because the agency-level protest itself was untimely, the

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<sup>4</sup> Additionally, this procurement does not fall within the exception in our Bid Protest Regulations for "protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required." 4 C.F.R. § 21.2(a)(2). There is no legal requirement for a debriefing here because this procurement was conducted "in accordance with FAR Part 13.5," which does not require the agency to provide a debriefing for unsuccessful vendors, and a debriefing was not otherwise legally required in the circumstances here. RFQ at 1; Gorod Shtor, B-411284, May 22, 2015, 2015 CPD ¶ 162 at 3 (finding that a procurement conducted pursuant to simplified acquisition procedures is not one involving a required debriefing).

subsequent protest to our Office is likewise untimely. 4 C.F.R. § 21.2(a)(3); Herman Constr. Group, Inc., B-415394, Jan. 4, 2018, 2018 CPD ¶ 14 at 4.

The protest is dismissed.

Thomas H. Armstrong  
General Counsel