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Decision

Matter of: Advanced Concept Enterprises, Inc.

File: B-410069.3; B-410069.4

Date: January 22, 2015

Kevin J. Maynard, Esq., Rand L. Allen, Esq., and Samantha S. Lee, Esq., Wiley Rein LLP, for the protester.

Joel B. Lofgren, Esq., and Michael G. McCormack, Esq., Department of the Air Force, for the agency.

Mary G. Curcio, Esq., Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not an interested party to challenge agency's evaluation of awardee's proposal where protester is not in line for award if protest is sustained.

DECISION

Advanced Concept Enterprises, Inc. (ACE) of Shalimar, Florida, protests the Department of the Air Force's award of a contract to Sonoran Technology and Professional Services, LLC, of Goodyear, Arizona, under request for proposals (RFP) No. FA4890-13-R-0122, for E-3 mission crew training. ACE asserts that the agency unreasonably evaluated Sonoran's proposal.

We dismiss the protest on the basis that the protester is not an interested party under our Bid Protest Regulations because there was another offeror in line for award before ACE.

The solicitation provided for award to the offeror that submitted the lowest-priced, technically acceptable offer, based on an evaluation of past performance, technical, and price factors. RFP at 188. Price was to be evaluated for realism and reasonableness. Id. at 194.¹

¹ There is a dispute between the agency and the protester as to the nature of the price realism analysis that was required to be performed. The agency report reflects that the agency did perform a price realism analysis. Since we are dismissing the

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Following the receipt and evaluation of proposals, Sonoran, which submitted the lowest-priced (\$28,609,748), technically acceptable proposal, was awarded the contract. Agency Report (AR), Tab 37, Source Selection Decision Document (SSDD) at 5, 10. ACE submitted the third lowest-priced, technically acceptable proposal.² Id. at 5-7, 10.

ACE submitted its protest on November 4, and supplemented it on November 17, and again on December 15, when it submitted its comments in response to the agency report. ACE asserts that the agency failed to conduct a realism analysis of Sonoran's price proposal and unreasonably evaluated Sonoran's technical proposal. ACE also argues that, "to the extent" the agency changed its requirements, it was required to amend the solicitation and provide offerors with the opportunity to submit revised proposals. Second Supp. Protest and Comments at 23.

Under our Bid Protest Regulations, we will only consider protests filed by an "interested party," that is, an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (2014). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57 at 2. A protester is not an interested party where it would not be in line for contract award if its protest were sustained. Id.

Here, the solicitation provided for award to the lowest-priced, technically acceptable offeror. The record reflects that there is another offeror that submitted a technically acceptable proposal with a price lower than the price proposed by ACE. SSDD at 5, 10. ACE did not protest that this other offeror failed to propose sufficient staffing. Nor did ACE otherwise challenge the evaluation of the other offeror's technical proposal. Thus, even if we were to sustain ACE's challenge to the evaluation of Sonoran's proposal, the second-lowest-priced, technically acceptable offeror, not

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protest for failure to establish interested party status, we need not resolve the protester's challenges to the agency's price realism analysis of the awardee's proposal.

² This procurement was the subject of earlier protests which our Office dismissed after the agency decided to take corrective action. See Advanced Concept Enters., Inc., B-410069, Aug. 13, 2014; BGI, LLC, B-410069.2, Aug. 13, 2014. Following a reevaluation the contract was awarded to Sonoran. This protest concerns the award decision following the reevaluation of proposals.

ACE, would be in line for award. Accordingly, ACE is not an interested party to maintain this protest.

ACE argues that it should be considered an interested party because it asserted in its initial protest that the agency improperly evaluated all proposals using a minimum required staffing level of 12,000 man-hours to provide simulator operator support, which was inconsistent with the solicitation. Second Supp. Protest and Comments at 29 (citing Protest at 14-20). ACE reasons that if we sustain its protest on this basis, the agency will be required to amend the solicitation and re-evaluate proposals. However, after the agency produced documents demonstrating that the Air Force, as indicated in the solicitation, used the 12,000 hours as the number of hours that offerors were required to be available to support simulator operations, AR at 5, ACE abandoned this argument. In its comments on the agency report, ACE instead argued that Sonoran did not propose sufficient man-hours to perform the function. Second Supp. Protest and Comments at 18-22. Since ACE abandoned the argument that the agency applied a minimum man-hour requirement of 12,000 hours, focusing instead on a challenge only to the evaluation of Sonoran, ACE cannot use that argument as a basis to establish that it is an interested party.

ACE also argues that it should be considered an interested party because its challenge to the price realism analysis applied to all offerors, not simply to Sonoran. ACE however, did not provide any information that would call into question the realism of the price proposed by the second lowest-priced, technically acceptable offeror. See e.g., Second Supp. Protest and Comments at 8-11. Accordingly, we find that ACE has not stated a valid basis to protest the realism of the intervening offeror's price proposal. See U.S. Aerospace, Inc., B-403464, B-403464.2, Oct. 6, 2010, 2010 CPD ¶ 225 at 7-8; View One, Inc., B-400346, July 30, 2008, 2008 CPD ¶ 142 at 2-3; Siebe Envtl. Controls, B-275999.2, Feb. 12, 1997, 97-1 CPD ¶ 70 at 2 (protester must provide a sufficient factual basis to establish a reasonable potential that allegations have merit; mere speculation is insufficient to meet this requirement).

Finally, ACE asserts that it should be considered an interested party because it alleged that, "to the extent" the agency's requirements have changed it must advise offerors and allow them the opportunity to submit revised proposals. Second Supp. Protest and Comments at 23. According to ACE, if we were to sustain this basis of protest ACE would be permitted to submit a revised proposal, and could be the awardee after a reevaluation. However, while ACE asserts that the price realism evaluation was improper, it has made no showing that the agency's requirements have changed such that an amendment to the solicitation was required.

The protest is dismissed.

Susan A. Poling
General Counsel