



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Celeris Systems, Inc

File: B-416890

Date: October 11, 2018

Bryan B. Arnold, Esq., Gordee, Nowicki & Blakeney, LLP, for the protester.

Richard B. Oliver, Esq., and J. Matthew Carter, Esq., Pillsbury Winthrop Shaw Pittman LLP, for INDUS Technology, Inc., the intervenor.

Robert Jusko, Esq., Trenton J. Bowen, Esq., and James C. Brent, Esq., Department of the Navy, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that military agency misevaluated proposals is dismissed as premature where required post-award debriefing consistent with extended debriefing procedures of 10 U.S.C. § 2305(b)(5)(B)(vii)-(b)(5)(C) had commenced, but agency had not responded to protester's questions, so debriefing had not concluded when protest was filed.

DECISION

Celeris Systems, Inc., of Anaheim, California, a small business, protests the issuance of a task order to INDUS Technology, Inc., of San Diego, California, also a small business, under SeaPort-e request for proposals (RFP) No. N0025317R3012, issued by the Department of the Navy, Naval Undersea Warfare Center (NUWC) Keyport, for engineering, technical, infrastructure, logistic, business, and underwater vehicle operational site support services for the Navy's Pacific Fleet Test and Operational Assessment Division, NUWC Detachment Pacific, Pearl Harbor Torpedo Division, and Fleet Technical Support Division, primarily in Hawaii and Guam, as well as Japan and other locations. Celeris, the incumbent contractor, argues that the Navy misevaluated its task order proposal.

We dismiss the protest.

Our Bid Protest Regulations provide that we will not consider a protest challenging a procurement conducted on the basis of competitive proposals, where a debriefing is required if the protest is filed before the debriefing date offered to the protester; the

protest instead should be filed not later than 10 days after the debriefing.¹ 4 C.F.R. § 21.2(a)(2). This rule is designed to encourage early and meaningful debriefings and to preclude strategic or defensive protests. Real Estate Ctr., B-274081, Aug. 20, 1996, 96-2 CPD ¶ 74.

The protest states that Celeris's debriefing began on September 24, 2018. Celeris then submitted questions to the Navy on September 26, but it then filed this protest with our Office on September 28. Protest at 1-2. The Navy states that, as of approximately 1 p.m. on October 2, when it filed the dismissal request seeking dismissal of the protest as premature, it had not yet provided answers to those questions. Dismissal Request at 1.

Celeris appears to argue that the extended debriefing was then completed. Additionally, Celeris argues that the protest should not be dismissed because the incomplete debriefing involves the extended debriefing procedures of 10 U.S.C. § 2305(b)(5)(B)(vii)-(b)(5)(C). In particular, the protester argues that the Navy was statutorily directed to respond to Celeris's questions by October 2, and that the agency's obligation to answer questions should not delay a firm's ability to file a protest, to meet the timing requirements of 31 U.S.C. § 3553, or to obtain a stay of performance within the statutory time.

In the context of the extended debriefing procedures, we consider a protest to be premature until the conclusion of the entire debriefing process, so as in other circumstances, we will also dismiss a protest filed before completion of the extended debriefing process, and we will recognize one filed afterward as timely so long as it is filed within the timeliness requirements. The potential effect on an agency's ability to commence or continue performance of the awarded contract (or task order, as here) during the extended debriefing process (or from the protester's perspective, its entitlement to a stay of performance), must be considered secondary to the policy interests identified above, which require the dismissal of a protest filed before the completion of a debriefing.

We therefore dismiss the protest. See Global Eng'g & Constr. Joint Venture, B-275999.3, Feb. 19, 1997, 97-1 CPD ¶ 77. As section 21.2(a)(2) provides, a protest filed within 10 days of the date on which the debriefing is held will be considered timely with respect to bases known before or as a result of the debriefing (with the exception of alleged solicitation improprieties covered by paragraph section 21.2(a)(1)). We also point out that the law requires the stay of contract performance only if the agency

¹ The evaluated cost/price for each vendor exceeded \$25 million. See Protest exh. B, Debriefing to Celeris, at 1. No party has disputed that the protest meets the jurisdiction threshold for our Office to decide a task order protest under 10 U.S.C. § 2304c(e)(1)(B), and for Celeris's debriefing to be required under 10 U.S.C. § 2304c(d).

receives notice of a protest filing within 5 days after the offered debriefing date, or within 10 days after the award, whichever is later. 31 U.S.C. § 3553(d).

The protest is dismissed.

Thomas H. Armstrong
General Counsel