



Decision

Matter of: Ecology Mir Group, LLC

File: B-422881

Date: September 12, 2024

Zach McKnight and Marcia Compton, Ecology Mir Group, LLC, for the protester. Ann M. Calabrese, Esq., James M. Chisholm, Esq., and John Toner, Esq., Department of the Navy, for the agency. Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is untimely where it was filed more than 10 days after the agency advised the protester that its quotation was evaluated as technically unacceptable.

DECISION

Ecology Mir Group, LLC (EMG), of Fairfax, Virginia, protests the issuance of a federal supply schedule (FSS) purchase order to another vendor under request for quotations (RFQ) No. N3220524Q4076A, issued by the Department of the Navy, Military Sealift Command, for lodging negotiation and management services. EMG argues that the agency unreasonably evaluated its quotation as technically unacceptable.

We dismiss the protest as untimely.

The agency issued the RFQ via the General Service Administration's eBuy system pursuant to the procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4 to procure lodging negotiation and management services for United States Naval Ship Kanawha personnel. RFQ at 1; RFQ, attach. 4, Performance Work Statement (PWS) at 1. The agency required vendors to provide multiple extended stay studio rooms over a 3-month period in Mobile, Alabama, with eight additional 1-week options. PWS at 1. The RFQ advised that award would be made on a lowest-priced, technically acceptable basis. RFQ at 3. The solicitation period closed on August 8, 2024. *Id.* at 1.

On August 13, the Navy issued the purchase order to another vendor, and notified EMG and the other remaining vendors through the eBuy system that their quotations were unsuccessful. Award Notice--1 at 1.

On August 16, the Navy provided EMG with a brief explanation of the basis for the award decision. Protest at 2, E-mail from Navy to EMG, Aug. 16, 2024. As relevant, the brief explanation included the following:

In accordance with FAR 8.405-2(d), [Military Sealift Command] is providing this brief explanation of the basis for the award decision. Please note that this is not a debrief.

In accordance with the terms of the RFQ, the Government awarded a single [firm-fixed-price] Contract resulting from this RFQ to the responsible quoter whose quote, conforming to the RFQ, represented the Lowest Price Technically Acceptable quote inclusive of options. Your quote was not technically acceptable, and therefore, was not the lowest price technically acceptable quote.

Id. In other words, the agency specifically advised EMG that its quotation was not selected for award because the quotation was technically unacceptable. *Id.*

On August 19, EMG requested that the Navy provide a “debrief” and additional information as to why its quotation was evaluated as technically unacceptable. Protest at 3, E-mail from EMG to Navy, Aug. 19, 2024.

On August 20, EMG sent additional correspondence to the Navy requesting a “debrief” by close of business, August 22. Protest at 4, E-mail from EMG to Navy, Aug. 20, 2024. Later that day, the Navy responded, “[y]our email has been [received].” Protest at 4, E-mail from Navy to EMG, Aug. 20, 2024.

On August 22, EMG contacted the Navy again, explaining that it did not receive a response and that it “will have to loop in the [Small Business Administration] ombudsman and possible GAO if we cannot receive an explanation for the award at a cost higher than ours.” Protest at 5, E-mail from EMG to Navy, Aug. 22, 2022. Again, the Navy responded simply, “[y]our email has been received.” Protest at 6, E-mail from Navy to EMG, Aug. 22, 2024.

On August 26, EMG contacted the Navy a final time. EMG communicated the following:

We have not received anything from the government on this matter we are looping in our attorney and the [General Services Administration] Ombudsman’s office as it looks like the government is trying to push off the ‘debrief’ until the [period of performance] starts so EMG cannot file a protest. EMG was not awarded this [purchase order] even though we bid lower than the ‘awardee.’

Protest at 6, E-mail from EMG to Navy, Aug. 26, 2024.

On August 29, EMG filed this protest with our Office. EMG argues that the Navy unreasonably evaluated its quotation as technically unacceptable and that, as a result, the agency improperly issued the purchase order to a vendor quoting a higher price. Protest at 1.

On September 3, the Navy requested dismissal of the protest. The Navy argues that the protest is untimely because EMG was aware that its quotation was not selected for award as of August 16, and the protest was not filed until August 29.¹ Req. for Dismissal at 2.

On September 4, EMG responded to the Navy's request. EMG explains that, after learning its quotation was unsuccessful, it sought additional information or clarification from the agency. Resp. to Req. for Dismissal at 1. EMG also argues that, to the extent we conclude its protest is untimely, that the protest should be excepted from such requirements because the agency deliberately misled the firm into believing that a response was forthcoming in order to prevent the firm from filing a timely protest. *Id.* ("Furthermore, we believe the Navy Contracting Office deliberately delayed communication to extend the process beyond the 10-day window specified under the Federal Acquisition Regulation (FAR), aiming to prevent EMG from filing a timely protest.").

Our Bid Protest Rules contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 days after the basis of protest is known or should have been known, with the exception of 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); *see also Federal Sales. Serv., Inc.*, B-237978, Feb. 28, 1990, 90-1 CPD ¶ 249 at 3.

Here, the record shows that on August 16, the Navy definitively notified EMG that it did not receive the award because the agency had evaluated its quotation as technically unacceptable; as a result, any protest challenging the agency's evaluation of its quotation and selection decision must have been filed with our Office by close of business, Monday, August 26. EMG, however, did not file this protest until August 29. Thus, we conclude that this protest is untimely because it was not filed within 10 days as required by our Regulations.

¹ Alternatively, the Navy argues that our Office lacks jurisdiction to consider the protest because the purchase order is valued below the \$25 million statutory threshold established for our Office to review challenges to task or delivery orders placed under a Department of Defense (DOD) multiple-award contract. Req. for Dismissal at 2. The agency is incorrect because the limitation on our jurisdiction to consider such protests does not extend to orders issued under the FSS. *Panacea Consulting, Inc.*, B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 1-2 n.1.

Additionally, we disagree that the protest should be excepted from satisfying our timeliness requirements because the agency allegedly prevented EMG from filing its protest within the 10-day window. We interpret EMG's argument as requesting that our Office apply the "good cause" exception to our timeliness rules. See 4 C.F.R. § 21.2(c) ("GAO, for good cause shown, or where it determines that a protest raises issues significant to the procurement system, may consider an untimely protest.").

In this regard, invocation of the good cause exception to our timeliness rules requires a showing on the part of the protester that there was some "good cause" that prevented it from filing its protest in a timely manner. *ThunderCat Tech., LLC*, B-421299, Mar. 6, 2023, 2023 CPD ¶ 63 at 6. We confine our use of the exception to those instances where there is some unexpected and unanticipated development that prevents the protester from timely filing its protest. *Id.*

On this record, we conclude that EMG fails to demonstrate the requisite "good cause" because EMG's failure to timely file was the result of its own incorrect assumption that the agency would provide it with a debriefing. The fact of the matter is this procurement was conducted pursuant to the procedures set forth under FAR subpart 8.4, which do not require the agency to provide a formal debriefing; rather, those procedures contemplate the agency offering only a "brief explanation," which, as noted above, was provided on August 16. FAR 8.405-2(d); see also *USGC Inc.*, B-400184.2 *et al.*, Dec. 24, 2008, 2009 CPD ¶ 9 at 9 n.8 (explaining that procurements conducted under FAR subpart 8.4 do not provide for agency debriefings). Accordingly, we have no basis to invoke the good cause exception to our timeliness rules.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel