



Decision

Matter of: Coffman Specialties, Inc.

File: B-400706.2

Date: November 12, 2008

Angela J. Soldner, Esq., Coffman Specialties, Inc., for the protester.
James H. Roberts, III, Esq., Van Scoyoc Kelly PLLC, for Baldi Bros., Inc., the intervenor.
Bryan C. Naquin, Department of the Navy, for the agency.
Linda S. Lebowitz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest based on speculation is dismissed because the protester failed to state sufficient legal and factual grounds for protest as a direct result of not making a timely request for a post-award debriefing.

DECISION

Coffman Specialties, Inc. (CSI) of San Diego, California, protests the award of a contract to Baldi Bros., Inc. of Beaumont, California, under request for proposals (RFP) No. N62473-08-R-2206, issued by the Department of the Navy, for runway repairs and improvements at Travis Air Force Base in California. As discussed below, CSI failed to state sufficient legal and factual grounds for this Office to consider its protest as a direct result of the firm's failure to timely request a post-award debriefing.

We dismiss the protest.

The record shows that on September 19, 2008, the agency advised CSI that the contract had been awarded to Baldi in the amount of approximately \$44.3 million. By letter dated September 21, CSI sent a Freedom of Information Act (FOIA) request to the agency, requesting "the breakdown of the bids and all the alternate items from all bidders." CSI Letter, Sept. 21, 2008. By e-mail dated September 22, CSI posed the following question to the agency: "Was wondering if we could get all the bid results from the above[-]subject project?" CSI E-mail, Sept. 22, 2008. By e-mail dated

September 23, the agency responded that “bid results [are] not releaseable [sic] information.” Agency E-mail, Sept. 23, 2008.

Referencing the post-award debriefing provisions in Federal Acquisition Regulation (FAR) § 15.506, by letter dated October 8, CSI “request[ed] a review of the contract award information.” CSI Letter, Oct. 8, 2008. In this letter, CSI stated that it “requests [a] debriefing within 5 days of this letter, to the extent practicable, as set forth above.” Id. By e-mail dated October 9, the agency advised CSI that its “request for a debrief is being denied due to [the firm’s] untimely request.” Agency E-mail, Oct. 9, 2008. By letter dated October 10, CSI requested to know when the agency would conduct a “full debriefing” and provide CSI “an opportunity to inspect all records requested under FOIA.” CSI Letter, Oct. 10, 2008. In its October 10 letter, CSI stated that, “[i]rrespective of the timeliness of [its debriefing] request,” FAR § 15.506(a)(4)(i) provides that “[u]ntimely debriefing requests may be accommodated.” Id.

By e-mail dated October 14, the agency advised CSI that the firm’s “request for [a] debrief was untimely and [would] not be accommodated.” Agency E-mail, Oct. 14, 2008. By letter dated October 16, the agency denied CSI’s FOIA request, explaining that the “breakdown of the bids and all the alternate items from the bidders are exempt or prohibited from release” under FOIA because, essentially, a proposal submitted in response to a competitive solicitation contains confidential, commercial, and financial information that is proprietary to the offeror. Agency Letter, Oct. 16, 2008.

CSI filed its protest with our Office on October 20 and, as relevant here, maintained that its September 22 e-mail, as set forth above, constituted a timely request for a post-award debriefing. In its protest, where it raised four issues, CSI stated that it had been “precluded by the [a]gency from receiving or viewing information” concerning this procurement and, as a result, it “makes certain assumptions . . . on the basis of belief.” Protest at 1. CSI further stated that it “still does not have knowledge that the bases it makes [in its] protest are true and accurate, and makes the allegations based on its good faith belief.” Id. at 4. CSI stated that it “submits [its] protest prematurely solely, since the 10-day period has not yet begun since, without access to the [a]gency’s records, it cannot be said that CSI has knowledge or should have had knowledge of the bases for this protest.” Id.¹

¹ Following CSI’s filing of its protest, the agency and the intervenor filed separate motions to dismiss. CSI filed responses to both motions.

The threshold issue presented here is whether CSI timely requested a post-award debriefing, pursuant to FAR § 15.506(a)(1), which provides that “[a]n offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with [FAR] [§] 15.503(b), shall be debriefed and furnished the basis for the selection decision and contract award.” Contrary to CSI’s position, we conclude that CSI’s September 22 e-mail, in which the firm simply asked the agency “if [it] could get all the bid results from the above[-]subject project,” did not constitute a request for a post-award debriefing pursuant to FAR § 15.506(a)(1).

More specifically, in its September 22 e-mail, CSI made no reference to a request for a post-award debriefing—all CSI requested was to “get all the bid results.” While CSI is correct that no specific language is prescribed in the FAR in terms of how to request such a debriefing, we believe that a protester must reasonably communicate to an agency that it is, in fact, seeking a formal debriefing, rather than simply making a general informational request. In our view, CSI’s September 22 e-mail fails to convey anything more than that the firm was seeking unspecified “bid results,” not a formal debriefing to be conducted in accordance with FAR § 15.506, which specifies the procedures for the conduct of the post-award debriefing and the information to be provided to offerors during such a debriefing.² Moreover, we point out that, in contrast to CSI’s September 22 e-mail, CSI’s letter dated October 8 constituted a clear request for a debriefing where the firm referenced the post-award debriefing provisions in FAR § 15.506 and specifically “request[ed] [a] debriefing within 5 days of this letter, to the extent practicable”; however, because CSI’s October 8 debriefing request was not timely made within 3 days after the firm received notice of award, the agency was not obligated to accommodate this untimely request. FAR § 15.506(a)(4)(i).³

² CSI states that its September 22 e-mail request for “the bid results” is similar to requests for information that it has made in other procurements. CSI Response to Agency Motion to Dismiss, Oct. 24, 2008, at 3. However, any information an agency has provided to CSI in other procurements (which may not have been competitive negotiated procurements conducted pursuant to FAR Part 15) is not relevant here since each procurement stands on its own. See, e.g., Ira Wiesenfeld & Assocs., B-293632.3, June 21, 2004, 2004 CPD ¶ 132 at 3; Discount Mach. & Equip., Inc., B-248321, July 22, 1992, 92-2 CPD ¶ 44 at 3 n.1.

³ To the extent that CSI complains that the agency will not accommodate its untimely request for a debriefing, we note that FAR § 15.506(a)(4)(i) does not mandate that the agency accommodate such an untimely request; rather, it is within the discretion of the agency to do so, as evidenced by the FAR’s use of the non-mandatory term “may,” as opposed to, for example, the use of the mandatory term “shall.” Moreover, an agency’s failure to provide a debriefing is not an issue that we generally will consider because the scheduling of a debriefing is a procedural matter that does not

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Thus, as a direct result of not timely requesting a post-award debriefing, CSI has failed to state sufficient legal and factual grounds for our Office to consider its protest. In this regard, the jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (2000 & Supp. IV 2004). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Pacific Photocopy and Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4. To achieve this end, our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f) (2008), require that a protest include a detailed statement of the legal and factual grounds for protest. This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence sufficient for this Office to reasonably conclude that a violation of statute or regulation has occurred. See, e.g., View One, Inc., B-400346, July 30, 2008, 2008 CPD ¶ 142 at 3. Bare assertions that an award was improper, with neither evidence nor explanation of the protester's theory regarding the alleged violation, are insufficient to satisfy this Office's requirements. Id.

Here, by CSI's own admission, as set forth above, in filing its protest "prematurely," it made "certain assumptions . . . on the basis of belief," acknowledging that it "still does not have knowledge that the bases it makes [in its] protest are true and accurate," and that it "makes the allegations based on its good faith belief." For example, in challenging the evaluation of its own proposal, CSI states that it "was denied information from the [a]gency and cannot determine if it was deemed an acceptable bidder." Protest at 6. CSI speculates that while its price, including options, was lower than Baldi's price, "it is possible that the [a]gency determined CSI to be nonacceptable . . . and/or the [a]gency applied a preference to Baldi's bid price." Id. CSI concludes that "[w]ithout further information, CSI has no information and cannot provide any detail concerning this basis for protest." Id.

This example illustrates that CSI's protest is based on speculation as a direct result of the firm's failure to timely request a post-award debriefing. On this record, we conclude that CSI's protest, based on bare allegations, without any supporting evidence for its positions, fails to comply with the requirement that a protest provide a sufficiently detailed statement of the legal and factual grounds for protest. 4 C.F.R. § 21.1(c)(4) and (f). Accordingly, CSI's protest does not warrant further consideration by our Office.

Finally, CSI contends that even if its protest is untimely, we should consider it pursuant to the "good cause" and "significant issue" exceptions to our timeliness rules. 4 C.F.R. § 21.2(c). The short answer to CSI's contention is that these exceptions to our timeliness rules are not applicable in this situation where CSI's

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involve the validity of an award. Barnesville Dev. Corp., B-400049, June 30, 2008, 2008 CPD ¶ 132 at 5.

protest is dismissed because it fails to state legally and factually sufficient grounds for protest. In other words, the exceptions to our timeliness rules address those limited circumstances under which we will consider an otherwise untimely protest; these exceptions do not remedy, and ultimately do not provide a basis for our consideration of, a protest that is legally and factually insufficient in the first instance.

The protest is dismissed.⁴

Gary L. Kepplinger
General Counsel

⁴ To the extent that CSI complains that the agency denied its FOIA request for information regarding this procurement, we note that our Office has no authority to determine what information an agency must disclose in connection with a party's request to an agency under FOIA. CSI's recourse in this regard is to pursue the disclosure under the remedies provided by FOIA. Raloid Corp., B-297176, Nov. 10, 2005, 2005 CPD ¶ 205 at 5 n.5; LNM Corp., B-247669, Apr. 29, 1992, 92-1 CPD ¶ 405 at 2.