



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: SOS International, Ltd.

File: B-407778.2

Date: January 9, 2013

Kevin C. Dwyer, Esq., and Ethan E. Marsh, Esq., Jenner & Block LLP, for the protester.

Capt. Anthony V. Lenze, Department of the Army, for the agency.

Louis A. Chiarella, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's corrective action, which involves the reevaluation of offerors' proposals, is dismissed as premature where the protester merely anticipates improper, prejudicial agency action.

DECISION

SOS International, Ltd. (SOSi), of Reston, Virginia, protests the corrective action being taken by the Department of the Army in connection with the agency's procurement of intelligence technical support services for the U.S. Army Europe area of responsibility under request for proposals (RFP) No. W564KV-12-R-0015. SOSi argues that the proposed corrective action is inadequate to address all aspects of an earlier protest it filed with our Office.

We dismiss the protest.

The RFP contemplated the award of an indefinite-delivery, indefinite-quantity (ID/IQ) type contract with a mobilization/phase-in period, a 12-month base period, and two 6-month option periods. The solicitation established three evaluation criteria-- technical, past performance, and price--and stated that award was to be made on a lowest-price, technically-acceptable basis. The Army received and evaluated proposals from offerors, including SOSi and Six3 Intelligence Solutions, Inc., and ultimately selected the proposal submitted by Six3 for award.

SOSi filed a protest with our Office challenging the propriety of the contract award to Six3. SOSi argued that the Army's evaluation of offerors' proposals under the

technical, past performance, and price factors was improper. In response to that protest, the agency advised our Office that it intended to reevaluate offerors' price proposals and make a new source selection decision. Based on the agency's proposed corrective action, we dismissed SOSi's protest as academic. SOS Int'l, Ltd., B-407778, Dec. 11, 2012.

After receiving our decision dismissing its protest, SOSi filed the current protest in our Office, maintaining that the agency's proposed corrective action is inadequate. SOSi complains that the Army's planned corrective action does not address the alleged deficiencies relating to the evaluation of proposals under the technical and past performance evaluation factors. The protester essentially argues that because its allegations regarding the agency's technical and past performance evaluations are (self-proclaimed) meritorious ones, and because the agency's corrective action does not remedy these errors, the corrective action is thereby deficient. SOSi also contends that its protest is timely insofar as the Army has announced its intentions to act improperly in conducting post-protest corrective action. Protest, Dec. 17, 2012, at 2, citing Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 7-8. We find SOSi's protest to be premature.

As an initial matter, we note that we have considered the merits of various protests challenging the adequacy of an agency's proposed corrective action. In doing so, in those instances where the agency's proposed corrective action alters or fails to alter the ground rules for the competition (*i.e.*, aspects that apply to all offerors), we have considered a protester's challenge of such to be analogous to a challenge to the terms of a solicitation, thus providing the basis for protest prior to award. Domain Name Alliance Registry, *supra* (protest challenging agency's decision not to reopen discussions); Northrop Grumman Info. Tech., Inc., B-400134.10, Aug. 18, 2009, 2009 CPD ¶ 167 at 10 (protest challenging agency's decision not to hold discussions or permit clarifications); see 4 C.F.R. § 21.2(a)(1) (2012). However, in those instances where the agency's proposed corrective action does not alter the ground rules for the competition, we have considered a protester's preaward challenge to be premature. Alliant Techsystems, Inc., B-405129.3, Jan. 23, 2012, 2012 CPD ¶ 50 at 2 n.1 (protest challenging the agency's evaluation as improper); Northrop Grumman Tech. Servs., Inc., B-404636.11, June 15, 2011, 2011 CPD ¶ 121 at 4 (protest challenging the agency's discussions as unequal).

SOSi argues that the course of action contemplated by the agency--reevaluating offerors' price proposals but not also the technical and past performance proposals--will lead to an improper evaluation. Contrary to the protester's assertions, however, the agency's decision not to reexamine various aspects of the evaluation as part of its corrective action does not effectively incorporate them into the ground rules for the competition. Accordingly, we need not now resolve this dispute, since we view SOSi's assertions of improper evaluation as premature, given that an award decision has not yet been made. See Intermarkets Global, B-400660.10, B-400660.11, Feb. 2, 2011, 2011 CPD ¶ 30 at 4-5; American K-9

Detection Servs., Inc., B-400464.6, May 5, 2009, 2009 CPD ¶ 107 at 5; Computer Assocs. Int'l, Inc., B-292077.2, Sept. 4, 2003, 2003 CPD ¶ 157 at 4 (protests that merely anticipate prejudicial agency action are speculative and premature). If SOSi is not selected for award, it may raise whatever evaluation errors it deems appropriate at that time. Intermarkets Global, *supra*, at 5.

The protest is dismissed.

Susan A. Poling
General Counsel