



Decision

Matter of: Blade Strategies, LLC

File: B-416752

Date: September 24, 2018

Mitzi Whittenburg, for the protester.
James J. McCullough, Esq., Michael J. Anstett, Esq., and Anayansi Rodriguez, Esq.,
Fried, Frank, Harris, Shriver & Jacobson LLP, for Advanced Technology International,
the intervenor.
Debra J. Talley, Esq., Department of the Army, for the agency.
Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging the terms of a solicitation for the award of an other transaction agreement is dismissed as untimely where the protester did not challenge the agency's use of its other transaction authority prior to the time for receipt of proposals.

DECISION

Blade Strategies, LLC, of Huntsville, Alabama, a woman-owned small business (WOSB), protests the decision by the Department of the Army, Army Contracting Command, to enter into an other transaction agreement (OTA) with Advanced Technology International (ATI), of Summerville, South Carolina, under the terms of notice for proposals (NFP) No. W31P4Q-17-X-0001, for development of guided missile technology. The protester argues that the NFP improperly provided for the award of an OTA, rather than a procurement contract, and also challenges other terms of the NFP.

We dismiss the protest.

The Army issued the NFP on April 7, 2018, seeking proposals to provide “development and maturation of guided missile technologies, manufacturing and enabling/disruptive technologies, and aviation technologies.” NFP at 3. The solicitation anticipated the award of the OTA to a representative of a consortium of industry and academia entities with expertise in the required technologies. Id. The solicitation provides for a 10-year agreement with an estimated value of \$2 billion. Id. at 5. The solicitation was issued under the provisions of 10 U.S.C. § 2371b, which authorizes the Secretary of the Army to

enter into an OTA for prototype projects. Id. at 1, 3. As discussed in detail below, OTAs are not procurement contracts and do not fall under the provisions of the Federal Acquisition Regulation (FAR). The agency received proposals from six offerors, including Blade Strategies. Agency Request for Dismissal, Sept. 6, 2018, at 3. The agency awarded the OTA to ATI on July 31. Id.

Blade Strategies raises the following three primary arguments: (1) the NFP improperly provided for the award of an OTA, rather than a FAR-based procurement contract; (2) the anticipated award to a consortium comprised of industry and academia improperly conflates the roles of for-profit and not-for-profit entities; and (3) the anticipated award to a consortium prejudiced the ability of WOSBs to compete for the award. Protest at 3-4, 24. The Army requests that we dismiss the protest because the protester is untimely to challenge the terms of the solicitation, which clearly set forth the agency's decision to obtain its requirements through the use of an OTA. For the reasons discussed below, we agree with the agency.¹

Under the Competition in Contracting Act of 1984 (CICA) and our Bid Protest Regulations, we review protests concerning alleged violations of procurement statutes or regulations by federal agencies in the award or proposed award of contracts for the procurement of goods and services, and solicitations leading to such awards. See 31 U.S.C. §§ 3551(1), 3552; 4 C.F.R. § 21.1(a). In circumstances where an agency has statutory authorization to enter into "contracts . . . [or] other transactions," we have concluded that agreements issued by the agency under its "other transaction" authority "are not procurement contracts," and therefore we generally do not review protests of the award or solicitations for the award of these agreements under our bid protest jurisdiction. Rocketplane Kistler, B-310741, Jan. 28, 2008, 2008 CPD ¶ 22 at 3; see also MorphoTrust USA, LLC, B-412711, May 16, 2016, 2016 CPD ¶ 133 at 7-8. We will review, however, a timely protest that an agency is improperly using its other transaction authority to procure goods or services. 4 C.F.R. § 21.5(m); see also Oracle America, Inc., B-416061, May 31, 2018, 2018 CPD ¶ ___ at 10-11; Rocketplane Kistler, supra; MorphoTrust USA, supra.

With regard to timeliness, our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Our timeliness rules require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals or quotations be filed before that time. 4 C.F.R. § 21.2(a)(1); see AmaTerra Env'tl. Inc., B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3. Where a protester is aware that the agency has issued a competitive

¹ The protester also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to conclude that there are any issues raised by Blade Strategies that are timely or within our jurisdiction.

solicitation seeking to enter into an OTA pursuant to its statutory authority, any protest regarding the use of that authority must be filed prior to the time for receipt of initial proposals. Exploration Partners, LLC, B-298804, Dec. 19, 2006, 2006 CPD ¶ 201 at 6 n.4; MorphoTrust USA, LLC, supra, at 5 n.8.

Here, Blade Strategies was aware of the issuance of the solicitation, as it submitted a proposal. This solicitation expressly stated that the agency was seeking proposals for the award of an OTA under the authority of 10 U.S.C. § 2371b. NFP at 1, 3. Because the protester did not challenge the agency's use of its other transaction authority to conduct the competition prior to the time for receipt of initial proposals, its protest regarding the use of that other transaction authority is untimely. See Exploration Partners, LLC, supra; MorphoTrust USA, LLC, supra, at 5 n.8. Similarly, all of the protester's other challenges to the terms of the NFP are untimely because they were not filed prior to the time for receipt of initial proposals.² See 4 C.F.R. § 21.2(a)(1); AmaTerra Envtl. Inc., supra.

The protest is dismissed.

Thomas H. Armstrong
General Counsel

² In its response to the request for dismissal, the protester raises a new challenge to the ratings assigned to its proposal. See Protester's Response to Request for Dismissal, Sept. 11, 2018, at 3. As discussed above, this protest concerns the award of an OTA, and therefore any challenges regarding the evaluation of proposals or the award decision are not within our Office's jurisdiction. See Rocketplane Kistler, supra. In any event, these challenges were not raised within 10 days of when the protester knew or should have known of their basis, and therefore would not be timely even if they were matters within our Office's jurisdiction. See 4 C.F.R. § 21.2(a)(2) (protests of matters other than the terms of solicitations to be filed no later than 10 days after a protester knows, or should know of a basis for protest); Agency Request for Dismissal, Sept. 6, 2018, at 3 (explaining that the protester was provided feedback on the evaluation of its proposal on August 24).