



Decision

Matter of: Monbo Group International

File: B-420765; B-420765.2

Date: June 8, 2022

Dee Monbo for the protester.

Gregory J. Matherne, Esq., and Richard L. Hatfield, Esq., Department of the Treasury, for the agency.

David Carter and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging solicitation language barring vendors who did not submit Phase I quotations from participation in Phase II of the solicitation is dismissed as untimely where the protest was filed after the deadline for submission of Phase I quotations.

DECISION

Monbo Group International, of Owings Mills, Maryland protests the terms of request for quotations (RFQ) No. 2032H3-22-R-00005, issued by the Department of Treasury, Internal Revenue Service (IRS) for Freedom of Information Act support services.¹ The RFQ contemplates the establishment of a blanket purchase agreement pursuant to Federal Acquisition Regulation section 8.405-3. The protester contends that the solicitation improperly restricts competition, and that the agency improperly failed to issue a presolicitation notice to assess marketplace interest in the opportunity.

We dismiss the protest.

The solicitation was issued on April 26, 2022, via the General Services Administration's (GSA's) electronic e-Buy system. As relevant here, the RFQ provided for a two-phase submittal process. RFQ at 43. In Phase I, vendors were required to submit a one-page summary demonstrating their experience performing work similar in size, scope and

¹ The solicitation indicates that it is "a Request for Proposal (RFQ)." RFQ at 1, 6. While a request for proposals (RFP) is not synonymous with a request for quotations (RFQ), differences between the two are not material for purposes of our decision here.

complexity to the requirements identified in the Performance Work Statement (PWS) Section 3. *Id.* at 44. The solicitation advised vendors that failure to participate in Phase I would preclude them from participating in Phase II, and that Phase II submissions would not be accepted from vendors that did not make Phase I submissions by the due date stated in the solicitation. *Id.* at 51. The deadline for Phase I submissions was May 10, 2022. *Id.* at 43. The protester filed its protest on May 18, 2022.²

The protester argues that the solicitation improperly restricts competition by barring vendors from participating in Phase II if they do not make Phase I submissions by the May 10 deadline. Protest at 1-2. The protester also argues that the agency is using vendor Phase I responses to the solicitation to assess marketplace interest in the opportunity, which is contrary to the customary government practice of conducting market research by issuing a pre-solicitation notice. Supp. Protest at 1-2.

We dismiss the protester's first argument as an untimely challenge to the terms of the solicitation. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation, which are apparent before the time set for receipt of initial proposals, must be filed prior to that time. See 4 C.F.R. § 21.2(a)(1); see *Sea Box, Inc.*, B-401523, B-401523.2, Sept. 25, 2009, 2009 CPD ¶ 190 at 3-4. Where a solicitation uses a phased submission and evaluation process, and a protester objects to a solicitation term pertaining to the Phase I submission, the protest must be filed prior to the due date for the Phase I submission to be timely. See *The Charles E. Smith Cos.*, B-277391, Sept. 25, 1997, 97-2 CPD ¶ 88 at 2-3. Here, the protester's challenge to the clearly stated solicitation requirement for vendors to make Phase I submissions in order to participate in Phase II is untimely because it was brought after the time set for receipt of Phase I submissions. This protest ground is thus dismissed.

The protester next argues that by conducting market research for this procurement, the agency did not follow the customary government practice of issuing a pre-solicitation notice in the form of either a Sources Sought Notice (SSN) or a Request for Information (RFI). Supp. Protest at 1. We dismiss this argument for failing to state a valid basis of protest. Where a protest allegation does not facially demonstrate unreasonable agency action, we will dismiss it for failing to state a valid basis for protest. *Elevator Serv., Inc.*, B-416258.2, B-416258.3, Sept. 13, 2018, 2018 CPD ¶ 319 at 3 (citing 4 C.F.R. § 21.5(f)).

First, the agency has provided documentation showing that it did, in fact, post a sources sought notice in the GSA e-Buy system approximately six months before issuing the solicitation. Req. for Dismissal, exh. 1, Confirmation of Posting, exh. 2, Affidavit of Contracting Officer at 1. Second, the protester has not provided any support for its allegation that the agency is using responses to the solicitation to assess marketplace interest in this opportunity. Rather, the solicitation by its terms explains that the agency will use the Phase I responses to advise individual firms as to the likelihood that they will be viable competitors under Phase II "to minimize quote development costs for

² The protester also filed a supplemental protest on May 20.

those with little to no chance of receiving an award.” RFQ at 50-51. Accordingly, this argument does not state a valid basis of protest.

The protest is dismissed.

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General Counsel