



Decision

Matter of: Gulf Master General Trading, LLC

File: B-420682.2; B-420682.3

Date: September 26, 2022

Gary Collora, Gulf Master General Trading, LLC, for the protester.
Norah Molnar, Esq., and John O'Brien, Esq., Cordatis LLP, for Star Capital Defense Contracting and General Maintenance, LLC, the intervenor.
Erika Whelan Retta, Esq., Isabelle P. Cutting, Esq., Siobhan Donahue, Esq., and Danelle McGinnis, Esq., Department of the Air Force, for the agency.
Emily R. O'Hara, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of awardee's price is dismissed where challenges to certain contract line items are untimely and the remaining allegation of unbalanced pricing fails to state a legally sufficient basis of protest.

DECISION

Gulf Master General Trading, LLC, of Dubai, United Arab Emirates, protests the issuance of a purchase order to Star Capital Defense Contracting and General Maintenance, LLC, of Abu Dhabi, United Arab Emirates, under request for quotations (RFQ) No. FA5706-22-Q-0005, issued by the Department of the Air Force for solid waste management services. The protester primarily challenges the agency's evaluation of Star Capital's price.

We dismiss the protest.

BACKGROUND

The solicitation, issued on February 21, 2022, anticipated issuance of an order, pursuant to the procedures of Federal Acquisition Regulation (FAR) parts 12 and 13, for the supervision, personnel, equipment, transportation, material, and other items and services necessary to perform integrated solid waste management services at Al Dhafra Air Base, Abu Dhabi, United Arab Emirates. Contracting Officer's Statement (COS)

at 5; Agency Report (AR), Tab 7, RFQ at 4.¹ The Air Force contemplated the award of a fixed-price order for one base year and four option years. RFQ at 4-5. Twelve contract line item numbers (CLINs) were listed for each year of performance.² *Id.* at 71.

The RFQ provided that award would be made to the responsible vendor whose offer, “conforming to the solicitation will be most advantageous to the [g]overnment, price considered.” *Id.* at 9. Specifically, the RFQ stated that the agency would: evaluate quotations for responsiveness; rank responsive quotations in order of the vendors’ total evaluated prices; and then determine whether the lowest-priced quotation was fair and reasonable. *Id.* The solicitation also advised vendors that the agency would evaluate quotations for unbalanced pricing as part of its assessment of whether prices were fair and reasonable. In this regard, the RFQ explained: “The Government shall analyze offers to determine whether unbalanced separately priced line items exist. Quotes that are determined to be unbalanced may be rejected if the lack of balance poses an unacceptable risk to the Government.” *Id.* at 10.

The Air Force received nine quotations from vendors, including quotations from Gulf Master and Star Capital. COS at 8. On April 6, 2022, the agency informed Gulf Master that an order had been issued to Star Capital. *Id.* at 9. Gulf Master filed its initial protest with our Office on April 14, arguing that Star Capital’s pricing was unbalanced because Star Capital’s pricing for CLIN X001 (municipal solid waste) was significantly underpriced. AR, Tab 14, April Protest at 9. On May 16, the Air Force notified our Office that the agency would take corrective action. Specifically, the agency stated it would reevaluate proposals to review for unbalanced prices. AR, Tab 16, Notice of Corrective Action at 1. We dismissed the protest as academic on May 23. *Gulf Master Gen. Trading, LLC*, B-420682, May 23, 2022 (unpublished decision).

In conducting its reevaluation, the agency did not request revised quotations from vendors. Rather, the Air Force conducted a new price analysis of existing quotations, updated its determination on associated risk to the government, and issued a new source selection decision. COS at 9. The Air Force, again, found Star Capital’s quotation to represent the best value to the agency. AR, Tab 19, Notice of Award at 1. The agency notified Gulf Master of its unsuccessful quotation on June 27, 2022. AR, Tab 20, Notice of Unsuccessful Quotation at 1. Gulf Master filed the present protest with our Office on July 6.

¹ Unless otherwise noted, references to page numbers are to sequential numbering stamped on the pages of the Adobe PDF documents provided by the agency.

² According to the agency, CLINs X001 to X005 “are Fixed Monthly Prices,” while CLINs X006 to X011 “will vary month to month.” AR, Tab 18, Simplified Acquisition Decision Document at 10; RFQ at 71-73. All CLINs at issue in this protest fall under the fixed monthly price category.

DISCUSSION

The protester makes several allegations, but primarily argues that the agency's award decision was improper because the agency failed to reasonably evaluate Star Capital's quotation for unbalanced pricing. Specifically, Gulf Master contends that Star Capital's price for CLIN X001 (municipal solid waste) was significantly underpriced, while CLIN X004 (medical waste) and CLIN X005 (pharmaceutical waste) were significantly overpriced. Protest at 6. We have reviewed all of the protester's claims, and for the reasons discussed below, we dismiss the protest.³

Timeliness

As noted above, Gulf Master filed its initial protest with our Office on April 14. In that protest, Gulf Master claimed that the awardee's price was unbalanced because Star Capital's price for CLIN X001 was significantly underpriced. Significantly, the protester did not challenge any other CLIN prices by Star Capital in the April protest. AR, Tab 14, April Protest at 9. The record reflects that the protester was aware of Star Capital's pricing for CLIN X004 and CLIN X005 when it filed its April protest. See AR, Tab 14, April Protest at 10 (displaying a table in the body of the April protest depicting Gulf Master's and Star Capital's unit and extended prices for CLINs X001-X005). Yet, in that protest, Gulf Master only based its unbalanced pricing allegation on the assertion that CLIN X001 was underpriced. *Id.* at 9. Moreover, the agency's corrective action only called for the reevaluation of existing quotations; it did not allow for the submission of revised quotations. AR, Tab 16, Notice of Corrective Action at 1. Thus, Star Capital's pricing for CLINs X004 and X005 remained the same during reevaluation.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *Verizon Bus. Network Servs., Inc.*, B-419271.5, B-419271.6, Apr. 26, 2021, 2021 CPD ¶ 191 at 14. Under these rules, a protest based on other than alleged improprieties in a solicitation must generally be filed no later than 10 days after the protester knew or should have known of the basis for protest. 4 C.F.R. § 21.2(a)(2). Where a protester initially files a timely protest, and later supplements it with

³ For example, the protester argues that the agency should have issued the solicitation pursuant to the procedures of FAR part 15, and that the solicitation should have included technical and past performance evaluation criteria. Protest at 10. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1); see *AmaTerra Envtl. Inc.*, B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3. Here, the protester waited until after award before it filed its challenge to the terms of the solicitation. As such, we dismiss this allegation as untimely because it challenges an alleged impropriety in the solicitation that should have been protested before the initial closing time for submission of quotations. *Quasar Glob. Techs., Inc.*, B-418007, Oct. 30, 2019, 2019 CPD ¶ 369 at 5.

independent grounds of protest, the later-raised allegations must independently satisfy the timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. *Savvee Consulting, Inc.*, B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 5. Our decisions explain the piecemeal presentation of evidence, information, or analysis supporting allegations previously made is prohibited. *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 4. Additionally, protest arguments raised after corrective action and re-award of a contract or order are untimely when the information underpinning such arguments was available to the protester as part of its earlier protest, and the protester failed to raise these arguments in a timely manner. *Verizon Bus. Network Servs., Inc.*, *supra* at 15.

To be considered timely, Gulf Master must have raised its challenges to Star Capital's CLIN X004 and CLIN X005 prices in its April protest. Here, the protester knew the operative facts underlying these allegations at the time of its initial protest. There is no evidence that--and the protester provides no explanation for why--the arguments could not have been timely asserted in its initial protest. Our Office will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. *Alfa Consult S.A.*, B-298164.2, B-298288, Aug. 3, 2006, 2006 CPD ¶ 127 at 3 n.2. Unwarranted piecemeal presentation or development of protest issues undermines our goal of affording parties the opportunity to present their cases with the least disruption possible to the orderly and expeditious conduct of government procurements.⁴ *Labat -Anderson Inc.*, B-246071.4, Oct. 9, 1992, 92-2 CPD ¶ 244 at 5.

⁴ In comments to the agency report, Gulf Master raises, for the first time, the claim that Star Capital's quotation was nonresponsive because Star Capital did not submit required licenses with its quotation. Comments at 2. A protester has an affirmative obligation to diligently pursue information providing a basis for protest, and a protester's failure to utilize the most expeditious information-gathering approach under the circumstances may constitute a failure to meet its obligation. *Bannum, Inc.*, B-408838, Dec. 11, 2013, 2013 CPD ¶ 288 at 5. Further, it is a protester's burden to affirmatively prove the timeliness of its allegations. *URS Fed. Servs., Inc.*, B 417643.2, B 417643.3, Feb. 24, 2020, 2020 CPD ¶ 75 at 7.

Here, Gulf Master elected to pursue its protest without counsel. As a result, Gulf Master was not provided a copy of Star Capital's quotation as part of the agency report. The protester, therefore, did not gain any information from the agency report that would have made Gulf Master aware of Star Capital's alleged failure to submit required licenses. Although the protester contends that this protest ground is timely because it was filed "within a reasonable time [of when the protester] learned" about Star Capital's alleged submission failure, the protester never asserts that Gulf Master filed this new protest ground within 10 days of learning the information. See Supp. Comments at 3. Moreover, there is no indication that the protester could not have gathered this information prior to--and asserted this allegation in--its initial protest. See *Bannum, Inc.*, *supra*. As discussed above, our Office will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. *Alfa Consult*

Unbalanced Pricing

Because we dismiss the protester's challenges to Star Capital's CLIN X004 and CLIN X005 pricing as untimely, we are left with the protester's remaining argument, as initially presented in its first protest, that Star Capital's pricing was unbalanced because CLIN X001 was significantly underpriced. Protest at 6. Gulf Master contends that Star Capital's pricing for this CLIN is underpriced because, according to the protester, the awardee plans to provide improper, smaller-sized dumpsters during performance, and that Star Capital has failed to account for increased fuel prices needed for delivery. *Id.* at 6-7.

Unbalanced pricing exists where the prices of one or more line items are significantly overstated, despite an acceptable total evaluated price (typically achieved through the underpricing of one or more other line items). *Semont Travel, Inc.*, B-291179, Nov. 20, 2002, 2002 CPD ¶ 200 at 3. To prevail on an allegation of unbalanced pricing, a protester must show that one or more prices in the allegedly unbalanced quotation are overstated; that is, it is insufficient for a protester to show simply that some line item prices in the quotation are understated. *MSC Indus. Direct Co., Inc.*, B-409585 *et al.*, June 12, 2014, 2014 CPD ¶ 175 at 7. Although both understated and overstated prices are relevant to the question of whether unbalanced pricing exists, the primary risk to be assessed in an unbalanced pricing context is the risk posed by an overstatement of prices, because low prices (even below-cost prices) are not improper and do not themselves establish, or create the risk inherent in, unbalanced pricing. *KIRA Training Servs., LLC, d/b/a KIRA Facilities Servs.*, B-419149.2, B-419149.3, Jan. 4, 2021, 2021 CPD ¶ 48 at 7-8.

Here, Gulf Master contends that Star Capital's pricing for CLIN X001 was significantly understated. The protester, however, fails to timely make the threshold showing required to prevail on this protest ground, namely that one or more of Star Capital's

S.A., supra. Accordingly, this allegation is similarly untimely and is, likewise, dismissed. *Id.*; 4 C.F.R. § 21.2(a)(2).

prices was overstated. See *KIRA Training Servs.*, *supra*. Accordingly, we dismiss this ground for failure to state a valid basis of protest.⁵ *Id.* at 8; 4 C.F.R. § 21.1(c)(4), (f).

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

⁵ The protester also claims that the Air Force failed to perform a price realism analysis on Star Capital's quotation. Protest at 10 ("Star Capitol bid should have been disqualified based on the price realism."). Absent a solicitation provision providing for a price realism evaluation, agencies are neither required nor permitted to conduct one in awarding a fixed-price order. *JMark Servs., Inc.*, B-417331.2, July 22, 2019, 2019 CPD ¶ 277 at 9. Here, the solicitation anticipated the issuance of a fixed-price order, and there was no price realism provision incorporated into the RFQ. Accordingly, Gulf Master's assertion that the agency failed to conduct a proper realism analysis, where no such price realism evaluation was required, does not state a valid basis of protest and is dismissed. *Id.*; *IR Technologies*, B-414430 *et al.*, June 6, 2017, 2017 CPD ¶ 162 at 7.