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Decision

Matter of: Pitney Bowes, Inc.

File: B-422528

Date: May 23, 2024

William A. Shook, Esq., The Law Offices of William A. Shook PLLC, for the protester. Catherine K. Kroll, Esq., and Kelly A. Carlson, Esq., Morris, Manning & Martin, LLP, for Quadiant, Inc., the intervenor.

Andrew J. Smith, Esq., Nolan T. Koon, Esq., Dmitrius R. McGruder, Esq., and Bruce A. Nessler, Esq., Department of the Army, 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

1. Protest challenging evaluation of awardee's proposal is dismissed as a matter of contract administration where protester alleges awardee failed to comply with contract clause.
 2. Protest challenging evaluation of awardee's proposal is dismissed where protester's contention that awardee failed to comply with technical requirement lacks a valid basis of protest.
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DECISION

Pitney Bowes, Inc., of Washington, D.C., protests the award of a task order to Quadiant, Inc., of Milford, Connecticut, under request for task order proposals (RTOP) No. W9124J-24-Q-POST, issued by the Department of the Army for the lease and maintenance of mail metering machines. The protester contends that the agency's evaluation of the awardee's proposal was unreasonable.

We dismiss the protest.

BACKGROUND

The solicitation, issued on March 20, 2024, anticipated the issuance of a fixed-price task order for the lease and maintenance of multiple commercial-off-the-shelf mail metering machines from the General Services Administration (GSA) Multiple Award Schedule

under the provisions of Federal Acquisition Regulation (FAR) subpart 8.4. Req. for Dismissal at 2; Protest, attach. 1, RTOP at 1,3; Protest, attach. 2, Performance Work Statement (PWS) at 2. The solicitation sought the lease and maintenance of the equipment for a base year and four 1-year options. Protest, attach. 2, PWS at 1.

Award would be made to the responsible offeror whose proposal represented the best value to the government on a lowest-priced, technically acceptable (LPTA) basis. The agency would consider the following factors in evaluating proposals: technical, past performance, and price. RTOP at 2. The Army received proposals from Pitney Bowes and Quadient in response to the solicitation. Protest, attach. 3, Notice of Award at 1. The agency found both proposals to be acceptable under the technical and past performance factors and that Quadient's offered price of \$554,634.60 was the lowest. *Id.* at 2. Based on its LPTA offer, the Army issued the task order to Quadient. *Id.* at 1. Pitney Bowes was notified of the award decision on April 12, 2024. *Id.* This protest followed on April 16.

DISCUSSION

The protester argues that the agency unreasonably evaluated the awardee's proposal. Specifically, the protester contends that Quadient could not comply with a contract clause and that Quadient did not propose all necessary equipment required by the solicitation. Protest at 8-9. For the reasons discussed below, we dismiss the protest.

Contract Administration

Pitney Bowes argues that Quadient could not comply with clause 252.204-7012 of the Defense Federal Acquisition Regulation Supplement (DFARS), which was incorporated into the solicitation by reference. Protest at 8. Prior to the agency report due date, the Army requested dismissal of the protest, arguing among other things, that compliance with the DFARS clause is a matter of contract administration, not reviewed by our Office. Req. for Dismissal at 8.

Our Office considers bid protest challenges to the award or proposed award of contracts. 31 U.S.C. § 3552. Therefore, we generally do not review matters of contract administration, which are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the Court of Federal Claims. 4 C.F.R. § 21.5(a).¹

¹ The few exceptions to this rule include situations where it is alleged that a contract modification improperly exceeds the scope of the contract and therefore should have been the subject of a new procurement; where a protest alleges that the exercise of a contractor's option is contrary to applicable regulations; or where an agency's basis for contract termination is that the contract was improperly awarded. See *Sprint Commc'ns Co., L.P.*, B-271495, April 26, 1996, 96-1 CPD ¶ 211 at 4. None of the exceptions apply here.

Clause 252.204-7012 of the DFARS, titled “Safeguarding Covered Defense Information and Cyber Incident Reporting,” requires contractors to abide by certain security requirements to protect covered contractor information systems. See DFARS clause 252.204-7012(b). The only reference in the solicitation to this DFARS clause is in the section titled “Clauses Incorporated by Reference.” RTOP at 3. The protester does not contend, nor do the RTOP or PWS show, that the agency was required to consider whether offerors could comply with this contract clause prior to award of the contract as part of the agency’s evaluation.² See *generally* RTOP; Protest, attach. 2, PWS.

Here, the solicitation included by reference DFARS clause 252.204-7012, along with a multitude of other contract clauses such as FAR clause 52.212-4 (Contract Terms and Conditions—Commercial Products and Commercial Services) and DFARS clause 252.204-7004 (Antiterrorism Awareness Training for Contractors). RTOP at 3. According to the agency, the clauses “are clearly contractual obligations that do not impact awardability.” Req. for Dismissal at 8. We agree. In this regard, we view compliance with such a requirement to be a condition of performance that the awardee must meet. See *Zermount, Inc.*, B-420174, B-420174.2, Dec. 27, 2021, 2022 CPD ¶ 41 at 5 (finding allegation to be a matter of contract administration where solicitation did not expressly require offerors to demonstrate compliance with term at time of award). As such, whether the awardee complies with the requirement is a matter of contract administration, which we will not consider. 4 C.F.R. § 21.5(a); *Castellano Cobra UTE MACC LEY 18-1982*, B-420429.4, June 17, 2022, 2022 CPD ¶ 150 at 5.

Insufficient Basis of Protest

Pitney Bowes also argues that the evaluation of Quadient’s proposal was unreasonable because, according to the protester, Quadient could not have proposed all equipment required by the solicitation. Protest at 9. Specifically, the protester contends that based on the awardee’s low price, the awardee must not have included a personal computer (PC) workstation unit in its overall metering machine system. *Id.* The agency asserts that this allegation lacks a legally sufficient basis of protest. We agree.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Cybermedia Techs., Inc.*, B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. To achieve this end, our Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements

² Other than reciting select portions of the DFARS clause, the entirety of the protester’s allegation is encapsulated in one sentence: “In this instance, Quadient does not have the equipment and systems that meet all material requirements including a cloud based system that meets FedRAMP [Federal Risk and Authorization Management Program] security requirements and all requirements of NIST SP [National Institute of Standards and Technology Special Publications] 800-171.” Protest at 9.

contemplate that the protester will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Delta Risk, LLC*, B-416420, Aug. 24, 2018, 2018 CPD ¶ 305 at 10. Where a protester relies on bare assertion, without further supporting details or evidence, our Office will find that the protest ground essentially amounts to no more than speculation and does not meet the standard contemplated by our regulations for a legally sufficient protest. *PricewaterhouseCoopers Pub. Sector LLP*, B-415129.3, July 31, 2018, 2018 CPD ¶ 272 at 3.

Here, the gravamen of the protester's allegation is that the awardee should have been found technically unacceptable because, in the protester's view, Quadient could not have offered such a discounted price and included all equipment necessary to fulfill the agency's needs. Protest at 9. The protester's allegation, however, fails to state a valid basis of protest because it is based on, among other things, a factually inaccurate premise. To support its argument that Quadient did not propose a mail metering system that included a PC workstation, the protester provides marketing materials from Quadient's website and a copy of Quadient's GSA schedule price list. Protest, attachs. 6-9. The protester remarks that one of Quadient's mail metering machine models from the marketing materials (included as attachment 7 to the protest) does not include a PC workstation. Protest at 9. The model that Pitney Bowes references, however, is not the model that Quadient proposed for this requirement. Resp. to Req. for Dismissal at 8; *Compare* Protest, attach. 7 (iX-7 Series with Neoship and Neostats), *with* Protest attach. 6 (iX-7 Series with S.M.A.R.T.) and Protest, attach. 8 (same).

The Army notified Pitney Bowes in its debriefing on April 12, 2024, that Quadient proposed "the iX-7 S.M.A.R.T System." Protest, attach. 5, Email from Agency to Protester at 1. Per the marketing materials that the protester, itself, included with the protest, all iX-7 S.M.A.R.T System models include an "All-in-One PC." See Protest, attach. 9, Quadient GSA Price List at 33; see *also* Protest, attach. 6; Protest, attach. 8. Thus, Pitney Bowes's own protest exhibits not only fail to support its allegation but serve to underscore the agency's position that the awardee's proposed solution met the solicitation's requirements. In other words, the protester's misunderstanding or reliance on a factually inaccurate premise fails to provide factual grounds that are legally sufficient to support its protest. *Land Shark Shredding, LLC*, B-415785, Mar. 6, 2018, 2018 CPD ¶ 103 at 5 (finding allegation based on incorrect facts fails to state valid basis of protest).

Finally, to the extent that the protester's concern is that the awardee's price is too low to provide the solicited products, this allegation is similarly dismissed. As a general matter, when awarding a fixed-price order or contract, an agency is only required to determine whether offered prices are fair and reasonable. FAR 8.405-2(d); FAR 15.402(a). While an agency may conduct a price realism analysis in awarding a fixed-price contract or task order for the limited purpose of assessing whether an offeror's or vendor's low price reflects a lack of technical understanding or risk, offerors or vendors must be advised that the agency will conduct such an analysis. FAR 15.404-1(d)(3); *Advanced C4 Sols., Inc.*, B-416250.2 *et al.*, Oct. 2, 2018, 2018

CPD ¶ 344 at 5. As our Office has explained, in the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the solicitation expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and where the solicitation states that a proposal can be rejected for offering low prices. *PricewaterhouseCoopers Pub. Sector, LLP*, B-415504, B-415504.2, Jan. 18, 2018, 2018 CPD ¶ 35 at 12. Absent a solicitation provision providing for a price realism evaluation, agencies are neither required nor permitted to conduct one in awarding a fixed-price contract. *Id.*

Here, the solicitation contained neither an express price realism provision nor any statement that the agency would review prices to determine whether they are so low as to reflect a lack of technical understanding. As such, Pitney Bowes has failed to make the threshold showing required to prevail on this allegation, namely that the solicitation required a price realism analysis. Accordingly, we dismiss this ground for failure to state a valid basis of protest. *U.S. Facilities, Inc.*, B-418229, B-418229.2, Jan. 30, 2020, 2020 CPD ¶ 65 at 4-5; 4 C.F.R. §§ 21.1(c)(4), (f).

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel