



Decision

Matter of: BioneX, LLC

File: B-423630

Date: July 25, 2025

Warren Caldwell for the protester.
Joseph Kurr, Esq., for BFrench Consulting, LLC, the intervenor.
Sanique J. Balan, Esq., and Colonel Nina R. Padalino, Department of the Air Force, for the agency.
Kasia Dourney, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that agency failed to apply a historically underutilized business zone price evaluation preference to the protester's quotation is dismissed where the solicitation failed to establish such a preferential evaluation scheme.

DECISION

BioneX, LLC, a historically underutilized business zone (HUBZone) small business of South Fulton, Tennessee, protests the award of a contract to BFrench Consulting, LLC, of Cape Coral, Florida, under request for quotations (RFQ) No. FA568225Q8004, issued by the Department of the Air Force for certified strength and conditioning specialist services in support of the 57th Rescue Squadron at Aviano Air Base in Italy. The protester contends that the agency improperly failed to apply a HUBZone price evaluation preference, pursuant to Federal Acquisition Regulation (FAR) clause 52.219-4, while evaluating BioneX's quotation.

We dismiss the protest because, as filed with our Office, it does not establish a valid basis for challenging the agency's action.

BACKGROUND

The agency issued the RFQ on December 12, 2024, using the commercial acquisition procedures of FAR part 12, and the simplified acquisition procedures of FAR subpart 13.5. Agency Req. for Dismissal, attach. A, RFQ at 1. The solicitation anticipated award on a best-value tradeoff basis "to [a] responsible [vendor] whose

quot[ation] meets or exceeds the requirements outlined in this solicitation and is most advantageous to the Government,” based on price and technical capability¹ evaluation factors. *Id.*, attach. C, RFQ Evaluation Factors at 1-2.

With respect to price, the RFQ advised that the agency would evaluate the fairness and the reasonableness of the total evaluated price. *Id.*, attach. C, at 3. The Air Force was also to analyze separately priced contract line items to determine if the prices were unbalanced. *Id.*

As relevant to this protest, among the various provisions, clauses, and contract terms in the solicitation that were marked as applying to this procurement, the RFQ did not include a marked box next to FAR clause 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns. *Id.*, attach. D, RFQ Clauses and Provisions at 29.

After evaluating quotations, the agency determined that BFrench Consulting provided the best value to the government and notified the protester of its determination. *Id.*, attach. E, Email Correspondence at 1-2. In response, BioneX inquired about the agency’s failure to apply a 10 percent price discount, on the basis of FAR clause 52.219-4, in the evaluation of BioneX’s price. *Id.* The Air Force explained that the clause was not applicable to the instant solicitation because it only applied to “acquisitions conducted within the United States,” and not, as here, where “the service[s] were to] be performed outside the United States.” *Id.* at 2.

This protest followed.

DISCUSSION

BioneX argues that the Air Force improperly failed to apply a HUBZone price evaluation preference in its evaluation of Bionex’s proposed price. Protest at 1-2. The protester disputes the agency’s explanation that FAR clause 51-219.4 does not apply to overseas procurements, contending that such an “interpretation ignores clear regulatory language and established GAO case law.” *Id.* at 1. Conceding that the clause was not specifically included in the RFQ, BioneX claims that where “the contracting officer does not affirmatively waive the HUBZone price evaluation preference, the clause operates by default.” Resp. to Req. for Dismissal at 2. The protester also contends that in a related procurement, the Air Force similarly “omitted” FAR clause 52.219-4 from the solicitation but still applied a “HUBZone [p]rice [p]reference [d]iscount” to BioneX’s price quotation, resulting in the protester receiving the award. *Id.* at 1.

¹ The technical capability evaluation factor included two subfactors: (1) prior experience and (2) technical and management approach. Agency Req. for Dismissal, attach. C, RFQ Evaluation Factors at 2-3.

The agency and the intervenor contend that the protester's arguments are based on factual misrepresentations and warrant dismissal.² See Agency Req. for Dismissal at 3; Intervenor Req. for Dismissal at 1. Specifically, they allege that the protester cannot assert a violation of FAR clause 52.219-4 because the solicitation did not include the provision. *Id.* The Air Force also adds that "where. . . the Agency was not required to include such provision, BioneX has not and cannot successfully allege that the Agency violated any applicable law or regulation." Agency Req. for Dismissal at 3. The agency thus argues that the protest fails to meet the minimum requirements for a legally and factually sufficient protest under our Bid Protest Regulations. *Id.*

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

² The agency also asserts that BioneX's protest is based on nonexistent GAO decisions--bearing "the hallmarks of cases generated by [artificial intelligence (AI)]"--and as such, the protester undermines the integrity and effectiveness of GAO's bid protest process. Agency Req. for Dismissal at 2-3 (internal citations omitted). The Air Force notes that the cited decisions contained in the protester's filings either do not appear to exist or, to the extent the citations are valid, do not stand for the factual or legal positions asserted. *Id.* As BioneX failed to address this part of the agency's dismissal request, see Resp. to Req. for Dismissal, *generally*, we specifically asked the protester to provide page citations for each of the cases cited in its pleadings. Electronic Protest Docketing System (Dkt.) No. 12. In response, the protester provided three case citations, out of several cases cited in its protest and its response to the dismissal requests, with page citations and corresponding short excerpts allegedly taken from the listed cases, in support of its protest arguments. Based on our review, however, none of those excerpts matched the content of the cases listed.

Parties appearing before our Office, including those proceeding without counsel, as the protester here, have an obligation to accurately summarize factual or legal assertions, including cited decisions. See *Assessment and Training Sols. Consulting Corp.*, B-423398, June 27, 2025, 2025 CPD 122 at 7 n.6. As we recently observed in *Raven Investigations & Security Consulting, LLC*, B-423447, May 7, 2025, 2025 CPD ¶ 112, parties must take particular care when using AI or other electronic systems in preparing their protest submissions to ensure the accuracy of information presented. Such reasonable measures include, for example, reviewing decisions cited in such electronic sources before presenting them to our Office. Full text copies of GAO decisions are publicly available for review on GAO's website, at www.gao.gov.

Our Office necessarily reserves an inherent right to dismiss any protest and impose sanctions against a protester, where a protester's actions undermine the integrity and effectiveness of our process. *Raven Investigations & Security Consulting, LLC*, *supra*. Here, because we dismiss this protest as failing to state a claim, we do not exercise this right to impose sanctions. The protester is advised, however, that the future submission of filings to our Office with citations to nonexistent authority may, after a review of the totality of the circumstances, result in the imposition of sanctions.

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 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 contemplate that protesters 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. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

Here, we find that BioneX has not provided a detailed statement of the legal and factual grounds for its protest. Although the protester alleged that the agency should have applied a HUBZone price evaluation discount of 10 percent to BioneX's proposed price, the relevant FAR clause 52.219-4 was not included in the solicitation.³ While BioneX also claims that nevertheless, "th[at] clause operates by default," Resp. to Req. for Dismissal at 2, the protester does not accurately⁴ cite to any legal authority to support this contention. In short, the protester fails to provide specific supporting facts or documentation to explain the assertion that the agency violated applicable procurement laws or regulations.

Last, we find no merit to the protester's assertion that the agency's alleged application of a HUBZone price evaluation preference to BioneX's price on a related procurement necessitated the Air Force doing the same here. What an agency did or did not do on a related procurement is effectively immaterial since "each procurement stands on its own, such that an agency's actions during one acquisition have no bearing on its

³ To the extent BioneX contends that FAR clause 52.219-4 should have been included in the RFQ, the protester raises an untimely challenge to the terms of the solicitation. Our regulations contain strict rules for the timely submission of protests. Specifically, protests of alleged apparent solicitation improprieties must be filed prior to the closing time for receipt of quotations. 4 C.F.R. § 21.2(a)(1); *Allied Tech. Group, Inc.*, B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 9 n.10. If BioneX believed the RFQ should have included FAR clause 52.219-4, it was required to challenge the terms of the RFQ prior to the deadline for the submission of its quotation. Because the protester failed to do so at the time, any challenge now is untimely.

⁴ As explained above, the protester relied on nonexistent or inapplicable cases in support of its allegations, including its assertion that FAR clause 52.219-4 operates by default.

actions in another acquisition.” *Shertech Pharmacy Piedmont, LLC--Recon.*,
B-419069.2, Apr. 1, 2021, 2021 CPD ¶ 134 at 2.

The protest is dismissed.

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