



Decision

Matter of: All American Express Solutions, LLC

File: B-423530

Date: August 1, 2025

Glen Hannah, for the protester.
Edward Oliver, for Rollin'O'Stop, LLC, the intervenor.
Timothy Saffles, Esq., Department of Veterans Affairs, for the agency.
Grace K. Byers, and Alexander O. Levine, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably evaluated awardee's experience and low pricing is dismissed where the solicitation did not require the agency to conduct such an evaluation.

DECISION

All American Express Solutions, LLC, a service-disabled veteran-owned small business (SDVOSB) of Indianapolis, Indiana, protests the award of a contract to Rollin'O'Stop, LLC, an SDVOSB of Ellenwood, Georgia, under request for quotations (RFQ) No. 36C25725Q0351, issued by the Department of Veterans Affairs (VA), for courier services. All American challenges the agency's evaluation of the awardee's quotation and the agency's affirmative responsibility determination.

We dismiss the protest.

BACKGROUND

The agency issued the RFQ on March 12, 2025, as a set-aside for SDVOSBs under the simplified acquisition procedures of Federal Acquisition Regulation (FAR) part 13. The RFQ contemplated the award, on a best-value tradeoff basis, of a fixed-price contract to be performed for a base year with four 1-year options. Agency Report (AR), Tab 3, RFQ at 1-4.

The solicitation anticipated that the agency would evaluate quotations considering technical approach and price. *Id.* at 33. Price was to be evaluated by adding the total

price for the base year and all option periods. The vendor's price would also be assessed for reasonableness, completeness, and fairness. *Id.* The solicitation did not contain any provision providing for a price realism analysis. *Id.* As relevant here, the RFQ incorporated by reference FAR clause 52.222-41, Service Contract Labor Standards, which provides that the resultant contract will be subject to the Service Contract Act.¹ *Id.* at 20. This clause mandates that each service employee performing this contract be paid not less than the minimum wages and fringe benefits either determined by the Department of Labor in any attached wage determination or contained in a predecessor contractor's collective bargaining agreement. FAR clause 52.222-41.

After receiving nine quotations by the closing date of April 4, the agency performed a comparative analysis using the solicitation's evaluation factors. Memorandum of Law (MOL) at 7; Contracting Officer's Statement at 1. On May 2, the agency awarded the contract to Rollin'O and posted notice of the award on SAM.gov (System for Award Management). MOL at 7. On May 12, All American filed this protest with our Office.

DISCUSSION

All American primarily raises three grounds of protest: (1) that Rollin'O's price is "unreasonably low"² and cannot meet the awardee's obligations under the Service Contract Act; (2) that the agency unreasonably failed to consider Rollin'O's alleged lack of experience during the evaluation; and (3) that the agency erred in its affirmative responsibility determination. As discussed below, we dismiss these protest grounds as legally insufficient under our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4), (f).³

In response to the protester's first argument, that the awardee's price is "unreasonably low," the agency contends that this protest ground is legally and factually insufficient, because it amounts to a contention that the agency should have conducted a price realism analysis, which the VA was not permitted to do. Protest at 2; MOL at 12. The agency further notes that the protester's allegation that the awardee will not pay wages commensurate with the Service Contract Act during the performance of the contract is a

¹ The Service Contract Act refers to the "Service Contract Labor Standards" statute codified at 41 U.S.C. chapter 67, also known as the McNamara-O'Hara Service Contract Act of 1965. The statute applies to federal contracts exceeding \$2,500 or having the principal purpose of using service employees to provide services to the government. See 41 U.S.C. § 6702(a).

² We note that an agency's concern in making a price reasonableness determination is whether the quoted price is too high, rather than too low. *Vital Link, Inc.*, B-405123, Aug. 26, 2011, 2011 CPD ¶ 233 at 6. Accordingly, the protestor's contention that Rollin'O's price is too low amounts to a concern with the realism of the price, not its reasonableness.

³ While we do not address every argument raised by the protester, we have considered each argument and find no basis on which to sustain the protest.

matter of contract administration that is outside the jurisdiction of our Office. *Id.* at 13 (citing 4 C.F.R. § 21.5). As discussed below, we agree.

Generally, for fixed-price contracts, while an agency may conduct a price realism analysis for the limited purpose of assessing whether a vendor's low price reflects a lack of technical understanding or risk, it may do so only when vendors have been advised that the agency will conduct such an analysis and that vendors' submissions may be rejected on the basis of low prices. *Emergint Techs., Inc.*, B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6; *Dust Busters Plus, LLC*, B-419853.7, Jul. 26, 2021, 2021 CPD ¶ 264 at 4. Absent a solicitation provision so advising vendors, agencies are neither required nor permitted to conduct a price realism analysis in awarding a fixed-price contract. *Id.* In addition, a claim that a competitor's lower price is a result of failing to meet a solicitation requirement, without more, is not a valid basis of protest. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. This is because, generally, when the agency contemplates the award of a fixed-price contract, the contractor bears the risk and responsibility for the actual cost of performance. *Robinson's Lawn Servs., Inc.*, B-299551.5, June 30, 2008, 2009 CPD ¶ 45 at 5. For this reason, there is no prohibition on an agency accepting a below-cost offer on a fixed-price contract. *M-Cubed Info. Sys., Inc.*, B-284445, B-284445.2, Apr. 19, 2000, 2000 CPD ¶ 74 at 9.

Here, the RFQ does not contain an express provision for a price realism analysis, nor does it advise vendors that their quotations can be rejected on the basis of low pricing. See RFQ at 33-34. Accordingly, the agency was prohibited from conducting a price realism analysis, that is, from assessing whether the awardee's price was so low that it jeopardized the contractor's ability to meet contract requirements, including those arising from the Service Contract Act. Moreover, on a fixed-price contract under which the awardee is required to pay the actual Service Contract Act wages and benefits regardless of the price it quotes, labor rates that are less than the Service Contract Act--required rates are legally unobjectionable. See *Biospherics, Inc.*, B-285065, July 13, 2000, 2000 CPD ¶ 118 at 12. Regardless of the labor rates the awardee used in calculating its price, it will still be required to compensate its employees at the applicable Service Contract Act rates. See *Free State Reporting, Inc.*, B-259650, Apr. 14, 1995, 95-1 CPD ¶ 199 at 7.

For these reasons, the protester's claim that the awardee submitted an unreasonably low price and therefore will not meet the Service Contract Act requirements does not constitute a valid basis of protest. *Midwest Tube Fabricators, Inc.*, *supra*. In addition, ensuring that Rollin'O complies with the Service Contract Act during contract performance is a matter of contract administration that our Office will not review. 4 C.F.R. § 21.5(a); *K-Mar Indus., Inc.*, B-400487, Nov. 3, 2008, 2009 CPD ¶ 159 at 6. Finally, whether the vendor can actually perform the contract in compliance with the Service Contract Act relates to the awardee's responsibility, which our Office does not review absent allegations not present here. 4 C.F.R. § 21.5(c).

The protestor additionally contends that Rollin'O does not possess sufficient experience to perform the contract, arguing that the awardee has no "prior award[s] of similar scope." Protest at 2. The agency responds that the solicitation terms do not require an evaluation of past performance or corporate experience. MOL at 8-9. All American concedes that "past performance was not an evaluation criterion," but maintains that awarding the contract to a vendor "with no verifiable experience performing contracts of this scope and complexity raises concerns about how the VA evaluated technical capability." Comments at 1. We dismiss this protest ground as legally and factually insufficient.⁴

Our Bid Protest Regulations 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. 4 C.F.R. § 21.1(c)(4), (f). 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 action. *Metson Marine Servs., Inc.*, B-413392, Oct. 19, 2016, 2016 CPD ¶ 313 at 5.

Here, the protester has not stated legally sufficient protest grounds because the agency's evaluation of Rollin'O's quotation, without considering past performance or experience, is consistent with the evaluation terms. See RFQ at 33-34. In considering a challenge to an agency's technical evaluation, our Office will review the evaluation to ensure it was consistent with the stated evaluation criteria and will sustain a protest where the agency's evaluation and conclusions are inconsistent with the solicitation's evaluation criteria. See *Phoenix Air Grp., Inc.*, B-412796.2, B-412796.3, Sept. 26, 2016, 2016 CPD ¶ 308 at 11. The terms of the solicitation here provided that the agency would only evaluate quotations considering technical requirements and price, such that the consideration of experience or past performance would have been inconsistent with the stated evaluation criteria. See RFQ at 33-34. Accordingly, we dismiss this allegation because it does not provide a valid basis for protest.

⁴ To the extent that the protester is arguing that the solicitation should have included experience or past performance as an evaluation factor, we dismiss this protest ground as untimely because the protester waited until after the solicitation closing date to raise this argument. 4 C.F.R. § 21.2(a)(1). 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. *United Int'l Investigative Servs., Inc.*, B-286327, Oct. 25, 2000, 2000 CPD ¶ 173 at 4. Under these rules, a protest based on alleged improprieties in a solicitation--such as a challenge to the evaluation factors contemplated by an RFQ--must be filed prior to bid opening or the time established for receipt of quotations, 4 C.F.R. § 21.2(a)(1). Here, All American did not protest the lack of an experience or past performance evaluation factor prior to the April 4 closing date. Protest at 2; Comments at 1. Accordingly, any such challenge now would be untimely.

Finally, All American argues that the agency failed to consider past performance in making its affirmative determination of responsibility. Comments at 1. Our Office will generally not consider a protest challenging an affirmative determination of responsibility except under limited, specified exceptions. 4 C.F.R. § 21.5(c); *FCi Fed., Inc.*, B-408558.4 *et al.*, Oct. 20, 2014, 2014 CPD ¶ 308 at 7. One exception is where a protest identifies evidence raising serious concerns that a contracting officer, in making an affirmative determination of responsibility, unreasonably failed to consider available relevant information that, by its nature, would have a strong bearing on whether the awardee should be found responsible. 4 C.F.R. § 21.5(c); *Verestar Gov't Servs. Group*, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 3-4.

The allegations that our Office has reviewed in the context of an affirmative determination of responsibility generally pertain to very serious matters, such as potential criminal activity. *Great Lakes Dredge & Dock Co., LLC*, B-416073, May 24, 2018, 2018 CPD ¶ 194 at 7. In contrast, we have found allegations of poor or inadequate past performance do not meet the threshold for our review since such information is not the sort of information that would be expected to have a strong bearing on the agency's responsibility determination. See *W.W. Grainger, Inc.*, B-420045, B-420045.2, Nov. 4, 2021, 2021 CPD ¶ 358 at 8. Here, All American has failed to identify evidence not considered that would be expected to have a strong bearing on the agency's responsibility determination. Accordingly, we dismiss this argument as legally insufficient.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel