



Decision

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Matter of: Mission1st Group, Inc.

File: B-413028.4

Date: November 20, 2017

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DIGEST

1. Protest challenging agency's cost realism evaluation is dismissed where protester's allegations are based on unsupported inferences or speculation that do not establish a valid basis of protest.
 2. Protest challenging the agency's pricing model is dismissed as untimely where the protest concerns the solicitation's price/cost evaluation methodology but the protester failed to challenge these terms before the solicitation's closing date.
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DECISION

Mission1st Group, Inc., a small business located in Princeton, New Jersey, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. HC1028-15-R-0030, issued by the Department of Defense (DOD), Defense Information Systems Agency (DISA), for global information technology (IT) services. The protester argues that the agency failed to conduct a proper cost realism evaluation.

We dismiss the protest.

BACKGROUND

On March 2, 2016, the agency issued the solicitation, referred to as "Encore III," which anticipates the award of two separate suites of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts, one resulting from full-and-open competition, and

the other, set aside for small-business concerns.¹ Agency Motion to Dismiss at 3. For the small business suite, which is the subject of this protest, the government intends to award up to 20 contracts, each with a 5-year base period, and one 5-year option period.

The RFP provides for award using a lowest-priced, technically acceptable source selection process, considering the following evaluation factors: technical/management approach, past performance, organizational/consultant conflict of interest, and cost/price.² RFP at 138-49.

As relevant here, under the cost/price factor, offerors were required to propose fixed-price and cost reimbursement labor rates for both government and contractor sites, for all 116 labor categories listed in the solicitation. RFP at 131. For the cost reimbursement labor rates, offerors were to include direct and indirect rate burdens, and detailed labor rate build-up information, including all formulas and methodology. Id. The solicitation provided that the agency would “calculate a Total Proposed Price [TPP] for each offeror by applying Government estimated labor hours for each year of contract performance to each offeror’s proposed fully burdened [fixed price] FP and [cost reimbursement] CR labor rates for each labor category at both site locations.” Id. at 139.

With regard to the cost evaluation, the RFP provided that the agency would “perform a cost realism analysis on the proposed [cost reimbursement] labor rates in accordance with [Federal Acquisition Regulation] FAR 15.404-1(d).” Id. at 148. Specifically, the RFP provided that the agency would conduct the following standard deviation analysis to determine cost realism:

The cost/price team will develop an average for each [cost reimbursement] CR labor rate utilizing the proposed CR rates on the “CR Labor Rate Table” tab from ALL complete proposals within each suite (Full and Open and Small Business). The team will then calculate the standard deviation of the average for each CR labor rate. . . . The Government considers a rate that is 1 standard deviation below the average to be a realistic rate, subject to cost analysis techniques in accordance with FAR 15.404. The initial calculations for Average and Standard Deviation will be utilized for the entirety of the evaluation and will not be recalculated if a competitive range is set.

Id.

¹ The RFP seeks the provision of technical solutions for DOD in support of its migration to an integrated and interoperable DOD information network, as well as other agencies having similar IT migration and integration needs. RFP at 11. Encore III is a follow-on to Encore II, and represents an ongoing evolution of DISA’s Defense Enterprise Information Services (DEIS) I and DEIS II contracts.

² For the full and open suite, the solicitation also provided for the consideration of an offeror’s small business subcontracting plan. Id. at 149.

In addition, the solicitation provided that “if an offeror’s proposed CR labor rate is more than 1 standard deviation below the average for that labor rate, the Cost/Price Team will review the submitted supporting documentation at the component level for that rate.” Id. The solicitation explained that, “[i]f it is determined that the supporting documentation supports the realism of the proposed rate, no adjustment will be made to the offeror’s rate.” Id. However, the solicitation further provided that, “[i]f inadequate or no justification is provided by the offeror for any component of that rate[,] . . . the Government will adjust the fully burdened CR Labor rate to be equal to the average for purposes of calculating the Most Probable Cost for that offeror.” Id.

Based on the standard deviation cost realism analysis, the RFP provided that the agency would “calculate a total most probable cost (MPC) for the [cost reimbursement] CR only portion of the proposal for each offeror by applying Government estimated labor hours for each year of contract performance to each offeror’s most probable cost labor rates for each labor category at both Government and contractor sites.” Id.

The solicitation provided that the agency would then calculate a total evaluated price (TEP) by adding the TPP for the fixed price portion of the proposal to the MPC for the cost reimbursement portion of the proposal. Id. at 149. The RFP explained that the cost/price team would then “organize the proposals by their TEP price from lowest to highest for each suite,” and “[u]p to 20 (30 if a competitive range is established) of the lowest evaluated priced proposals for each suite will next be evaluated by the contracting officer [] for compliance with other terms and conditions of the RFP.” Id.

After evaluating proposals, the contracting officer established a competitive range of the 30 offerors with the lowest total evaluated prices. Agency Request for Dismissal at 6. Mission1st’s proposal was ranked 53rd based on evaluated price, and 54th based on proposed price. Protest, Exh. D, Debrief, at 1. On September 25, 2017, the agency notified Mission1st that its proposal had not been included in the competitive range. Id., Exh. C, Notice of Exclusion, at 1. After a debriefing, this protest followed.

DISCUSSION

Mission1st argues that the agency unreasonably excluded its proposal from the competitive range based on the agency’s failure to conduct a proper cost realism analysis. Specifically, the protester argues that the agency failed to adequately analyze the specific cost elements of the offerors’ proposed costs, as well as consider the possible differences in the offerors’ proposed technical approaches. The protester also contends that the agency failed to calculate the mid-point averages for the pricing model in accordance with the terms of the RFP. As discussed below, we conclude that the protester’s allegations are either speculative, and therefore fail to provide an adequate basis for protest, or constitute an untimely challenge to the terms of the solicitation. We dismiss the protest for these reasons.

The protester first argues that the agency’s cost realism assessment improperly consisted of merely a “mechanical comparison of fully burdened [labor] rates to overall rate averages.” Protest at 18. Specifically, the protester contends that there is “no evidence” that the agency’s evaluation considered whether “any offeror’s . . . direct

salaries were realistic for the personnel,” whether the “indirect cost burdens assigned to offerors were realistic,” whether the “cost estimates reflected an adequate understanding of the work,” or whether the “offerors’ cost estimates were so low only because of deficiencies in technical approach that would require substantive cost increases to fix.” Id. Mission1st argues that, “had the agency properly evaluated each offeror’s proposed cost/price,” the agency would have “likely realized that many offerors’ cost/price proposals were unrealistic, leading it to either exclude them from the competition or apply significant upward adjustments,” such that “Mission1st’s proposal would have been among the 30 lowest-priced offers and thus included in the competitive range.” Id. at 15.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Pacific Photocopy & Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4. To achieve this end, our Bid Protest Regulations require that a protest must include a sufficiently detailed statement of the grounds supporting the protest allegations. 4 C.F.R. §§ 21.1(c)(4), 21.1(f), and 21.5(f). That is, a protest must include sufficient factual bases to establish a reasonable potential that the protester’s allegations may have merit; bare allegations or speculation are insufficient to meet this requirement. Ahtna Facility Servs., B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 11.

As set forth above, the solicitation specified a detailed approach for the agency’s evaluation of cost realism. RFP at 148. As pertinent here, the agency’s approach provided that the agency would develop an average for each cost reimbursable labor rate from the labor rates proposed by the offerors. Id. The solicitation also advised offerors that the agency would consider any labor rate within one standard deviation of the average to be realistic, subject to additional cost/price analysis. For any rate found to be outside of the one standard deviation, the solicitation provided that it would be evaluated by component (direct rates, indirect rates, etc.). Id.

As also noted above, Mission1st had the 54th lowest proposed price, and 53rd lowest evaluated price. Protest, Exh. D, Debrief, at 1. Based solely on this information, which Mission1st learned during its debriefing, the protester contends that the agency performed a flawed cost realism analysis on all 52 proposals found to have provided lower total evaluated prices than Mission1st. The protester does not, however, provide any information regarding any of these 52 offerors (or their proposals), other than the fact that, in the protester’s opinion, another offeror could not have proposed realistic rates “at a cost that is materially less than that proposed by Mission1st.” Id. at 19. Unsupported assertions that are mere speculation on the part of the protester do not provide an adequate basis for protest. Science Applications Int’l Corp., B-265607, Sept. 1, 1995, 95-2 CPD ¶ 99 at 2. Here, the protester’s speculation, based solely on its opinion that none of the other offerors could have proposed realistic rates “at a cost that is materially less than that proposed by Mission1st,” Protest at 19, is insufficient to state a valid basis for protest. 4 C.F.R. § 21.5(f).

Mission1st also contends that the agency failed to calculate the mid-point averages for the pricing model in accordance with the terms of the RFP. In this regard, the protester asserts that the agency improperly calculated the average comparison rate from the “total raw labor and indirect cost rates” proposed by the offerors, rather than from “realistic rates.” Protest at 20. As noted above, however, the RFP clearly advised offerors that the agency would develop an average for each cost reimbursable labor rate from the labor rates proposed by the offerors. RFP at 148. Accordingly, despite the protester’s arguments to the contrary, the solicitation articulated the agency’s intention to calculate average rates based on proposed pricing, not on evaluated “realistic” pricing.³ To the extent the protester disagrees with this evaluation scheme, this argument is untimely because it was not raised prior to the time for submission of proposals. 4 C.F.R. § 21.2(a)(1).

The protest is dismissed.

Susan A. Poling
General Counsel

³ Although the protester also argues that this protest ground is a challenge to the agency’s application of the RFP’s evaluation criteria, rather than a challenge to the terms of the RFP, we find no merit to this argument. The protester points to language in the RFP, which provides that the agency would “perform a cost realism analysis on the proposed cost realism labor rates in accordance with FAR 15.404-1(d).” RFP at 148. The protester asserts that this language is “wholly inconsistent” with the agency’s calculation of mid-point averages based on offerors’ proposed labor rates. Response to Dismissal at 7. As noted previously, the solicitation specified the agency’s intention to calculate mid-point average rates based on proposed pricing. RFP at 148. Accordingly, to the extent Mission1st believed, based on its reading of the solicitation, that the agency would calculate mid-point averages using “realistic” rates, rather than proposed rates, such an interpretation clearly conflicted with the RFP provision providing that mid-point averages would be developed using proposed rates. *Id.* As such, any ambiguity regarding these provisions was patent, *i.e.*, clear or obvious on the face of the RFP, rather than latent. Since any alleged ambiguity regarding these provisions was apparent on the face of the RFP itself, a protest on this ground was required to be filed prior to the submission of proposals. 4 C.F.R. § 21.2(a)(1); U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10. Accordingly, Mission1st cannot now timely challenge this matter.