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# Decision

**Matter of:** Dust Busters Plus, LLC

**File:** B-419853.7

**Date:** July 26, 2021

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Carol A. Thompson, Esq., The Federal Practice Group, for the protester.  
Elin M. Dugan, Esq., Department of Agriculture, for the agency.  
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## DIGEST

Protest that the agency misevaluated the protester's quoted pricing as unreasonably high is denied where the record shows that the agency reasonably made that determination based on a statistical analysis of quoted prices.

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## DECISION

Dust Busters Plus, LLC, of Eugene, Oregon, protests the establishment of blanket purchase agreements (BPA) with multiple other firms under request for quotations (RFQ) No. 1202SC21Q0001, issued by the Department of Agriculture, Forest Service, for wildland firefighter services. Dust Busters asserts that the Forest Service unreasonably evaluated its quotation and improperly made the selection decision.

We deny the protest.

## BACKGROUND

On January 27, 2021, the Forest Service issued the RFQ to procure Type 2 wildland firefighter crews for 34 host unit coordinate centers (HUCC) throughout the United

States.<sup>1</sup> Agency Report (AR) Tab 7, Conformed RFQ at 1, 4-6.<sup>2</sup> The RFQ contemplated the award of multiple fixed-price BPAs to be performed over a 5-year agreement period. *Id.* at 5, 27-28. The RFQ stated that the Forest Service would award enough BPAs to meet firefighting needs. *Id.* at 111.

Award would be made on a best-value tradeoff basis considering two factors, quote acceptability and price. Conformed RFQ at 110. The quote acceptability factor would be evaluated on a pass or fail basis (*i.e.*, “go” or “no-go”) considering three subfactors: assent to terms of the solicitation; key personnel; and past performance. *Id.* Quoted prices would be evaluated to determine whether they were fair and reasonable. *Id.* at 111.

Seventy-five vendors, including Dust Busters, submitted quotations prior to the February 24 close of the solicitation period. AR, Tab 13, Rationale for Establishment Memorandum (REM) at 2. The agency evaluated Dust Busters’s quotation as “no-go” under the quote acceptability factor. *Id.* at 2-4. Under that factor, Dust Busters was evaluated as “no-go” under the assent to the terms of the solicitation and key personnel subfactors. Specifically, the agency assigned Dust Busters’s quotation a “no-go” under the assent to the terms of the solicitation subfactor because the firm did not identify its key personnel by specific crew. *Id.* at 3. Additionally, Dust Busters was evaluated as “no-go” under the key personnel subfactor because some of the proposed key personnel possessed expired qualifications. *Id.* at 5. Finally, the Forest Service evaluated Dust Busters’s quoted prices as unreasonably high. *Id.* at 7. Ultimately, the Forest Service established BPAs with 52 other vendors. *Id.* at 8.

After Dust Busters learned that its quotation was unsuccessful, it filed this protest with our Office.<sup>3</sup>

## DISCUSSION

Dust Busters raises multiple allegations challenging the agency’s conduct of the acquisition. Principally, Dust Busters argues that the agency unreasonably failed to conduct a price realism analysis of the other offerors’ quotations as part of the price

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<sup>1</sup> Forest Service handcrews, typically comprised of 20 men and women, serve as the infantry of wildland firefighters. See Handcrews, <https://www.fs.usda.gov/science-technology/fire/people/handcrews> (last visited, July 7, 2021). There are five types of handcrews: Type 1--Interagency Hotshot Crews; Type 1; Type 2--Initial Attack; Type 2; and Type 3. *Id.*

<sup>2</sup> References to the conformed RFQ use the Adobe PDF page numbers.

<sup>3</sup> During the pendency of this protest, the Forest Service notified our Office of its intent to override the automatic stay pursuant to the procedures set forth in 31 U.S.C. § 3553. Notice of Override at 1.

evaluation.<sup>4</sup> Protest at 4. Dust Busters also argues that the agency unreasonably evaluated its quotation as “no-go” under the quote acceptability factor. *Id.* at 5

We have reviewed all of Dust Busters’s challenges, and conclude that none provide us with a basis to sustain the protest. We note, at the outset, that in reviewing protests challenging an agency’s evaluation of quotations, our Office does not reevaluate quotations, but rather, we examine the record to determine whether the evaluation was reasonable and consistent with the solicitation’s evaluation criteria and applicable procurement laws and regulations. *LED Lighting Sols., LLC*, B-416127, May 9, 2018, 2018 CPD ¶ 172 at 3.

### Price Evaluation

Dust Busters complains that the Forest Service failed to conduct a price realism evaluation of the other vendors’ quoted prices as part of the evaluation. Protest at 4. The firm asserts that, had it known that the agency would not conduct a price realism analysis, it would have quoted a lower price. Comments at 4. Dust Busters also argues that the agency unreasonably evaluated its quoted prices as unfair and unreasonable. *See id.* In response, the Forest Service argues that the RFQ did not permit the agency to conduct a price realism evaluation, and that it reasonably evaluated the firm’s price consistent with the terms of the solicitation. Memorandum of Law (MOL) at 15-16.

The RFQ instructed vendors to provide a price quotation consisting of itemized pricing for each location offered. Conformed RFQ at 106. When evaluating quoted pricing, the RFQ included the following provision:

An analysis will be conducted on the unit price proposed to determine the demonstrated understanding of the level of effort and equipment needed to successfully perform these services. Fair and Reasonableness will be determined by comparing current competition, historical data, and the Government Estimate. Rates must be determined fair and reasonable to be considered for an agreement.

*Id.* at 111.

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<sup>4</sup> Dust Busters argues that the agency unequally evaluated the firm’s quotation. Protest at 4. Specifically, Dust Busters complains that other firms’ quotations were evaluated as acceptable, even though those firms likewise omitted certifications for some key personnel. *Id.* We dismiss this allegation as speculative because it does not identify any particular firm as being evaluated in this manner, and is purely based on the protester’s unsupported “belief and understanding.” *Id.* at 4; *see also Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 3 (dismissing allegation as speculative because the allegation was unsupported by any factual evidence).

The agency's price evaluation did not include a price realism analysis. AR, Tab 11, Price Analysis by Company; AR, Tab 12, Price Analysis by Location. Instead, the agency analyzed only whether quoted prices were fair and reasonable. Contracting Officer's Statement at 2. In so doing, the Forest Service used 2020 established rates for Type 2 crews to compute an average price that was used as the internal government estimate.<sup>5</sup> AR, Tab 13, REM at 6. The Forest Service then calculated an estimated maximum reasonable price by adding one standard deviation to the average. *Id.* Additionally, the Forest Service analyzed the quoted rates, and determined that the average and maximum reasonable prices both on a national basis and for each HUCC location was consistent with the government estimates. *Id.*

Dust Busters quoted prices for [DELETED] crews at [DELETED] HUCCs. AR, Tab 8b, Dust Busters's Business Quotation at 27-35. When evaluating Dust Busters's pricing, the agency concluded that the firm's quoted prices were higher than the maximum reasonable price, and therefore unreasonably high. AR, Tab 11, Price Analysis by Company--Dust Busters Spreadsheet. The agency also noted that the majority of the firm's quoted price was significantly higher than the average prices. *Id.*; see also AR, Tab 13, REM at 7.

As a general rule, when awarding a fixed-price contract, an agency is only required to determine whether the offered prices are fair and reasonable. Federal Acquisition Regulation 15.402(a). An agency's concern in making a price reasonableness determination focuses on whether the offered prices are too high, rather than too low. *Science Applications Int'l Corp.*, B-408690.2, B-408690.3, Dec. 17, 2014, 2014 CPD ¶ 12 at 6. While an agency may conduct a price realism analysis in awarding a fixed-price contract for the limited purpose of assessing whether an offeror's low price reflects poor technical understanding or the heightened risk of unsuccessful performance, offerors must be advised that the agency will conduct such an analysis. *Id.* Absent an express price realism provision, we will conclude that a solicitation contemplates a price realism evaluation only where it expressly states that the agency will review prices to determine whether they reflect poor technical competence, *and* where the solicitation states that an offeror's submission may be rejected on the basis of low prices. *Id.* Without a solicitation provision providing for a price realism evaluation, an agency is neither required nor permitted to conduct such an evaluation when awarding a fixed-price contract. *Id.*

On this record, we conclude that the RFQ did not contain an express price realism provision, and did not otherwise provide for a price realism analysis. See Conformed RFQ at 111. Although the RFP advised that prices would be evaluated to determine technical competency, the solicitation did not explicitly state that the agency would conduct a price realism evaluation (*i.e.*, include an express price realism provision), or articulate that a vendor's quotation could be rejected on the basis of quoting low prices. *Id.* Rather, the RFQ only provided that the quoted prices must be "determined fair and

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<sup>5</sup> The Forest Service used established rates from the Oregon Department of Forestry's 2020 pricing for Type 2 crews. AR, Tab 13, REM at 6.

reasonable to be considered for agreement.” *Id.* Thus, we do not find Dust Busters’s allegation persuasive because the RFQ did not permit the agency to conduct a price realism evaluation, and only provided that the agency would analyze quoted prices for reasonableness.

Additionally, we have no basis to question the agency’s determination that all of Dust Busters’s quoted prices were unreasonable. A price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment by the contracting officer that we will question only where it is unreasonable. *Root9B, LLC*, B-417801, B-417801.2, Nov. 4, 2019, 2020 CPD ¶ 4 at 6. Here, we think the agency reasonably determined that Dust Busters’s quoted prices were too high because the agency’s analysis demonstrated all of the firm’s quoted prices were more than one standard deviation above the average. AR, Tab 11, Price Analysis by Company. Moreover, Dust Busters has not provided us with any basis to conclude that the agency’s analysis was unsound. See Comments at 4. Accordingly, we deny the protest allegation.

#### Quote Acceptability

Dust Busters argues that the agency unreasonably evaluated the firm’s quotation as “no-go” under the quote acceptability factor. Comments at 5. Specifically, Dust Busters complains that the Forest Service unreasonably determined that the firm failed to assign key personnel to specific crews.<sup>6</sup> *Id.* The agency responds that it reasonably evaluated the firm’s technical quotation as “no-go.” MOL at 22.

When completing the quote acceptability part of the quotation, the RFQ instructed each vendor to present enough information to reflect a thorough understanding of the requirement, and a detailed description of the techniques and procedures to accomplish the performance objectives. Conformed RFQ at 105. When responding to the assent to the terms of the solicitation subfactor, the RFQ instructed each vendor to submit all required documentation and to demonstrate compliance with all of the solicitation’s terms. *Id.* The RFQ advised that quotations would be evaluated as acceptable under this subfactor provided that vendors satisfied those requirements. *Id.* at 110.

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<sup>6</sup> In its protest, Dust Busters also alleges that the Forest Service unreasonably evaluated the firm as entirely ineligible for award (*i.e.*, “no-go” for all contract line item numbers (CLIN)) because the firm did not provide qualifications for some of its identified key personnel. Protest at 5. In other words, Dust Busters argues that it should have received award for the CLINs where it provided the requisite qualifications for identified key personnel. See *id.* The agency responds that Dust Busters’s quotation was not rejected “whole sale” on this basis, but rather the quotation was rejected because the firm did not identify key personnel for specific crews, and because the firm quoted unreasonably high rates. MOL at 22-23. We deny this argument because our review confirms that the agency did not reject Dust Busters’s quotation in its entirety due to the firm’s failure to provide certifications for some key personnel. See AR, Tab 13, REM at 8.

Regarding the key personnel subfactor, the RFQ instructed each vendor to provide documentation of the qualifications for key personnel. Conformed RFQ at 105. The RFQ advised that the agency would evaluate each vendor's ability to furnish the minimum qualified personnel, and vendors not providing sufficient key personnel would be evaluated as unacceptable. *Id.* at 110.

As noted above, Dust Busters was evaluated as "no-go" under the quote acceptability factor because the firm did not identify key personnel by crew. AR, Tab 10, Summary of Evaluation Results. Additionally, the agency noted that Dust Busters did not provide qualifications for all of its identified key personnel. AR, Tab 13, REM at 5.

Although our review shows that Dust Busters did, in fact, identify to which crews specific key personnel would be assigned, see AR, Tab 8A-1, Dust Busters Tech. Quotation at 2 (identifying the first proposed key person as being assigned to Crew-26), and therefore Dust Busters would have been eligible for CLINs where the firm quoted key personnel with current qualifications, we decline to sustain this allegation because any error did not result in the protester suffering any competitive prejudice. Competitive prejudice is an essential element of every viable protest, and we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. *UltiSat, Inc.*, B-418769.2, B-418769.3, Feb. 26, 2021, 2021 CPD ¶ 110 at 6.

Here, the protester did not suffer any competitive prejudice because all of Dust Busters's quoted prices were evaluated as unreasonably high, and as a result, the firm's entire quotation was ineligible for award. Indeed, the RFQ provided that BPAs would only be awarded to firms that received an overall "go" rating and quoted rates that were fair and reasonable.<sup>7</sup> Conformed RFQ at 111. Thus, even if the firm should have been assigned a "go" rating under the quote acceptability factor because the firm identified qualified key personnel for specific crews, such error did not result in any competitive prejudice because Dust Busters's quoted prices also were evaluated as unreasonably high rendering its quotation ineligible for award. Accordingly, we deny the protest allegation.

#### Source Selection Decision

Finally, Dust Busters complains that the agency unreasonably made the selection decision on a lowest-priced, technically acceptable (LPTA) basis, as opposed to a best-value tradeoff basis as required by the RFQ. Protest at 4. The Forest Service responds that it made the selection decision in accordance with the RFQ's terms. MOL at 16.

We dismiss this allegation because the protester is not an interested party to challenge the selection decision. Under our Bid Protest Regulations, a protester must be an

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<sup>7</sup> Additionally, we note that Dust Busters never alleged that it submitted all required documents for all of its key personnel. See Protest at 5; Comments at 5.

interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award of a contract. 4 C.F.R. § 21.0(a)(1). A protester is not an interested party if it would not be in line for award if its protest were sustained. *Lamb Informatics, Ltd.*, B-418405.5, B-418405.6, Mar. 5, 2021, 2021 CPD ¶ 116 at 6.

Here, even if we concluded that the agency unreasonably used an LPTA source selection methodology when making the award decision, Dust Busters would still be ineligible for award due to the agency's determination--which we have found reasonable--that the firm's quoted prices were unreasonably high. Additionally, we note that there were 52 other companies quoting 258 crews that were evaluated as "go" with fair and reasonable pricing. AR, Tab 13, REM at 8. Accordingly, we dismiss this allegation.

In any event, we think the agency's selection decision was consistent with the terms of the RFQ. The RFQ provided the following:

The Government will award enough BPAs anticipated to meet incident resource needs resulting from this solicitation to responsible quoters whose quotes conforming to the solicitation will be advantageous to the Government, price and other factors considered.

Conformed RFQ at 111. Here, consistent with that provision, the record shows that the agency evaluated all quotations under the quote acceptability and price factors, and determined that it needed to establish BPAs with all of the favorably evaluated vendors in order to meet its needs. AR, Tab 13, REM at 8. Additionally, the record does not show that the agency selected only the lowest-priced, technically acceptable vendors for award. *Id.* Thus, we do not find that the agency unreasonably employed an LPTA methodology when making the selection decision.

The protest is denied.

Thomas H. Armstrong  
General Counsel