



Decision

Matter of: Monbo Group International

File: B-420269; B-420269.2

Date: January 11, 2022

Dee Monbo for the protester.

Captain Timothy McLister and Major Weston Borkenhagen, Department of the Army, for the agency.

Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency's price realism analysis was unreasonable is denied where the agency's judgments were reasonable and consistent with the terms of the solicitation.
 2. Protest that the agency could not eliminate the protester's proposal from the competition for proposing an unrealistic price without referring the matter to the Small Business Administration for review under its certificate of competency procedures is denied where the price realism requirement was part of the solicitation's evaluation scheme and not a responsibility criterion.
-

DECISION

Monbo Group International, a small business of the U.S. Virgin Islands, protests the award of a contract to Action Technologies, LLC, a small business, under request for proposals (RFP) No. W9127P-21-R-0001, issued by the Department of the Army for non-professional administrative support services. The protester contends that the agency's price realism analysis was unreasonable and that, to the extent it was reasonable, the agency could not eliminate its proposal from the competition without referring the matter to the Small Business Administration (SBA) for review under its certificate of competency procedures.

We deny the protest.

BACKGROUND

The agency issued the RFP on August 13, 2021, under the commercial item procedures of Federal Acquisition Regulation (FAR) part 12 and the simplified acquisition procedures of FAR part 13. Contracting Officer's Statement (COS) at 1; Agency Report (AR), Tab 5, RFP at 1.¹ The RFP contemplated the award of a fixed-price contract for a 1-year base period and four 1-year option periods, to provide non-professional administrative services in support of the Virgin Islands National Guard's Office of the Deputy State Surgeon. RFP at 68.

The solicitation provided that the services were to be performed by contractor staff under specified Service Contract Act (SCA) labor categories.² *Id.* at 2-14. The RFP also included an SCA wage determination for the U.S. Virgin Islands, which contained the minimum labor rates and benefits that contractor staff in the applicable SCA labor categories were entitled to be paid under this contract. *Id.* at 95-109. The RFP also stated that the agency intended to award a contract without conducting discussions. *Id.* at 23.

The RFP provided for award on a lowest-priced, technically acceptable basis, considering three evaluation factors: (1) technical capability; (2) past performance; and (3) price. *Id.* at 29. As relevant here, to evaluate price, the agency was to perform a price realism analysis by considering whether the offered price was too low "which may indicate the prospective [o]fferor does not understand the requirement or may be offering an unrealistically low price" that could negatively impact contract performance. *Id.* at 30.

On or before the September 13 closing date for receipt of proposals, the agency received 21 proposals, including from Monbo and Action Technologies. See AR, Tab 24, Source Selection Decision Document (SSDD) at 2. After evaluating the proposals, the agency found that Monbo submitted the second lowest-priced proposal. *Id.* at 3. However, based on the results of its evaluation, the agency found both the lowest-priced offeror's and Monbo's proposals, while technically acceptable, were not eligible for award because they proposed prices that were unrealistically low.³ See AR, Tab 23, Price Analysis at 4; AR, Tab 24, SSDD at 3.

¹ The agency amended the solicitation twice. Unless otherwise noted, citations to the RFP in this decision are to the conformed copy of the solicitation issued as amendment two.

² The four SCA labor categories sought were "Registered Nurse IV," "Medical Records Clerk," "Medical Assistant," and, "Nursing Assistant IV." See *Id.* at 2-4.

³ Notably, the agency's price realism analysis incorrectly stated it was evaluating for price reasonableness. See AR, Tab 23, Price Analysis at 4. Price reasonableness and price realism are distinct concepts. *Logistics 2020, Inc.*, B-408543, B-408543.3, Nov. 6, 2013, 2013 CPD ¶ 258 at 7. The purpose of a price reasonableness analysis is to

Accordingly, the source selection authority decided to award to Action Technologies, the offeror with the lowest-priced, technically acceptable proposal with realistic pricing. *Id.*; COS at 4. After notifying Monbo it was not the successful offeror, the agency provided Monbo a debriefing on October 7. COS at 4; AR, Tab 27, Monbo Debriefing. On October 11, Monbo filed the instant protest.

DISCUSSION

First, Monbo contends that the agency's price realism analysis and source selection decision were unreasonable. Protest at 3; Comments & Supp. Protest at 1-2. In this regard, Monbo argues that the agency's price realism analysis was flawed because it was based on the assumption that contractor staff would need to be paid for a minimum of 2080 hours a year. Comments & Supp. Protest at 2. Monbo argues that, but for the agency's allegedly improper price realism analysis, the agency would have awarded it the contract as the lowest-priced, technically acceptable offeror. *Id.* at 1-2.

The agency responds that its evaluation and award decision were reasonable and in accordance with the terms of the solicitation. Memorandum of Law (MOL) at 9-15. In this regard, the agency argues that it conducted a reasonable price realism evaluation and properly found Monbo's proposal unacceptable on that basis. *Id.*

Where, as here, an RFP contemplates the award of a fixed-price contract, an agency may provide for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in an offeror's proposal. *M7 Aerospace, LLC*, B-415252.4, B-415252.5, Nov. 9, 2018, 2018 CPD ¶ 387 at 6-7. Where a solicitation provides for a price realism analysis, the depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. *Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP*, B-401865 *et al.*, Dec. 14, 2009, 2009 CPD ¶ 258 at 17. In reviewing protests challenging price realism evaluations, our focus is on whether the agency acted reasonably and in a manner consistent with the solicitation's requirements. *General Dynamics One Source, LLC; Unisys Corp.*, B-400340.5, B-400340.6, Jan. 20, 2010, 2010 CPD ¶ 45 at 9.

As noted above, the RFP required the agency to conduct a price realism analysis to determine whether a proposed price indicated "the prospective [o]fferor does not understand the requirement or may be offering an unrealistically low price" that could

determine whether the prices offered are too high, as opposed to a price realism analysis which determines whether prices are too low, such that there may be a risk of poor performance. See FAR 15.404-1(b); *Sterling Servs., Inc.*, B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. Despite this conflation of terms, and as discussed below, the agency clearly analyzed whether an offeror's low price presented a risk to the government that the offeror would not complete the period of performance; in short, a price realism analysis.

negatively impact contract performance. RFP at 30. Here, the agency assessed the realism of proposed prices by comparing them to what the agency believed to be the minimum price at which a contractor could successfully perform the contract while complying with the applicable SCA wage determination without operating at a loss.⁴ MOL at 12-13. AR, Tab 23, Price Analysis at 4. The agency calculated this “bare minimum” realistic price to compare to each proposal by multiplying 2080 paid hours per year⁵ with the SCA labor rates for each position required by the RFP. *Id.* As a result of its analysis, the agency concluded that Monbo’s proposed price was below this minimum realistic price, and that Monbo would therefore be operating at a loss. *Id.* The agency concluded that this posed a risk that Monbo would not be able to perform for the entire period of performance. *Id.*

Monbo disagrees with the agency’s calculations, arguing that while 2080 represents the total number of working hours in a year, a contractor would not need to pay its staff all 2080 hours per year to perform the contract, because “employees do not work on holidays . . . [or] vacation days.” Comments & Supp. Protest at 2. In this regard, Monbo claims that its proposed labor rates are “fully loaded rates which includes everything” such as paid holidays and vacation and that calculating its price by multiplying them by the 1912 hours employees would actually work was therefore realistic. *Id.*

We find the protester’s argument unpersuasive. While the protester is correct that, under the requirements of the RFP’s SCA wage determination, contractor staff will not be required to work on holidays or vacation days, the SCA wage determination is clear that the contractor must pay its employees for such days off. RFP at 104. Accordingly, we see no basis to object to the agency’s use of 2080 hours as the number of paid hours required to perform the contract. Further, to the extent the protester argues that the 2080 number should not apply to its proposed price because its labor rates are “fully loaded” to include the cost of paid holidays and vacation days, it has not demonstrated that these proposed rates actually include the cost of paid holidays and vacation days not captured by its proposed multiplier of 1912 work hours a year.

In this regard, the record shows that Monbo’s allegedly “fully loaded” rate for the nursing assistant IV position is lower than the minimum realistic rate used by the agency for the same position in which the agency does not include the cost of paid holidays and vacation days. *Compare* AR, Tab 15, Monbo Price Proposal *with* AR, Tab 23, Price

⁴ The agency calculated that the minimum price at which a contractor could perform the requirements of the contract for a year at the current SCA rates and benefits without operating at a loss was \$233,522, and the similar minimum price for all five potential years of performance was \$1,175,108. AR, Tab 23, Price Analysis at 4. The agency noted that this included no profit, overhead, or price escalation for the option years.

⁵ The agency states it determined this minimum number of paid hours considering the requirements of the Performance Work Statement (PWS), historical data, and the requirements of the SCA wage determination. MOL at 12 (*citing* RFP at 63, 69, 104); see *also* AR, Tab 23, Price Analysis at 4.

Analysis at 4. Similarly, despite the protester's price being based on significantly fewer hours, Monbo's proposed rate for the medical records clerk is equal to the agency's minimum realistic rate and its proposed rate for the medical assistant position is only 50 cents higher than the agency's minimum realistic rate. *Id.* Monbo's arguments here, without more, do not show that its proposed labor rates paid at 1912 hours a year would meet the RFP's SCA requirements.

In short, the record and Monbo's arguments here reflect that it either did not understand the level of effort required to perform the contract, or did not understand the compensation to which contractor staff were entitled under the relevant SCA wage determination. Accordingly, we find reasonable the agency's conclusion that Monbo's proposed fixed price would only allow for successful performance in compliance with the SCA at an operating loss. Given that the RFP specifically provided that the agency would evaluate whether prices were unrealistically low such that they could negatively impact contract performance, we see no basis to conclude that the agency's price realism analysis was unreasonable or inconsistent with the terms of the solicitation.

The protester alternatively alleges that the agency's evaluation of its price as unrealistic constitutes a negative responsibility determination, which, given its small business status, had to be referred to the SBA for a certificate of competency assessment.⁶ Comments & Supp. Protest at 1-2. We disagree.

Under the Small Business Act, 15 U.S.C. § 637(b)(7), the SBA has conclusive authority to determine the responsibility of small business concerns. Thus, when a procuring agency finds that a small business is not eligible for award based on a nonresponsibility determination or a failure to satisfy definitive responsibility criteria, the agency is required to refer the matter to the SBA for a final determination under its certificate of competency procedures. See *Specialty Marine, Inc.*, B-292053, May 19, 2003, 2003 CPD ¶ 106 at 2.

⁶ The agency requests that we dismiss this ground of protest, arguing that Monbo is not an interested party to raise it because Monbo has not challenged an intervening offeror who would be next in line for award. Req. for Dismissal at 2. The agency contends that, even were we to sustain Monbo's protest on this basis, there was a lower-priced technically acceptable offeror whose proposed price was also found unrealistic that would be entitled to a referral to the SBA under the certificate of competency procedures. *Id.* At this juncture, given that this other offeror was not found eligible for award by the agency and it is not clear that they would be found otherwise responsible by the SBA, we see no basis to consider them an intervening offeror "in line for award" ahead of Monbo.

Where a solicitation provides for a price realism analysis, our Office has found that an agency's concerns with low pricing as a result of a realism analysis constitute an evaluated assessment of an offeror's understanding of the solicitation's requirements and not a determination of nonresponsibility that can require referral to the SBA under the certificate of competency procedures.⁷ *Molina Eng'g, Ltd./Tri-J Indus., Inc. Joint Venture*, B-284895, May 22, 2000, 2000 CPD ¶ 86 at 4, n.3 (citing *Sutron Corp.*, B-270456, B-270456.2, Mar. 7 1996, 96-1 CPD ¶ 143 at 7). Here, the RFP specifically provided for a price realism analysis. RFP at 30. We therefore find that the agency's evaluation of Monbo's proposed price as unrealistically low occurred as part of a proper price realism analysis in accordance with the RFP's evaluation scheme and was not a determination of nonresponsibility. Accordingly, Monbo's proposal was properly eliminated from the competition and the agency was not required to refer it to the SBA.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁷ In contrast, where a solicitation does not contain a relevant evaluation criterion pertaining to realism or understanding, a determination that an offeror's price on a fixed-price contract is too low generally concerns the offeror's responsibility. *J.A. Farrington Janitorial Servs.*, B-296875, Oct. 18, 2005, 2005 CPD ¶ 187 at 3-4.