



Decision

Matter of: Talion Construction, LLC

File: B-422299.2

Date: July 16, 2024

Peter F. Lindborg, Lindborg & Mazor, LLP, for the protester.
Daniel J. Strouse, Esq., Cordatis LLP, for L&J Building Co., LLC, the intervenor.
James L. Weiner, Esq., Department of the Interior, for the agency.
Dylan T. Silver, Jacob M. Talcott, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of proposals is dismissed for failing to state a valid basis of protest, where protester alleged insufficient facts or details that would establish a likelihood that the agency violated applicable procurement laws or regulations.

DECISION

Talion Construction, LLC, (Talion), a small business of Murrieta, California, protests the award of a contract to L&J Building Co., LLC, d/b/a Rock Enterprise (L&J), under request for proposals (RFP) No. 140P8523R0001, issued by the Department of the Interior (DOI), National Park Service for the construction of a new entrance station at Joshua Tree National Park in California. The protester contends that DOI unreasonably determined that L&J's proposal was technically acceptable.

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 solicitation provided for award of a fixed-price construction contract on a lowest-price, technically acceptable basis. Resp. to GAO Req. for solicitation, attach. 1, RFP at 60. Technical acceptability would be evaluated under three factors: (1) relevant experience; (2) technical approach; and (3) past performance. *Id.* at 60-61. Of relevance to this protest, the minimum acceptability standard for relevant experience was successful completion as a prime contractor of at least three projects of similar

scope and magnitude to the current requirement within the past six years. *Id.* at 60. For the technical approach factor, the minimum standard was demonstration of an “adequate and compliant plan” to complete the requirement successfully, and a schedule adhering to the regulatory and stated schedule restrictions and meeting the required contract completion date. *Id.* For past performance, the minimum standard was proof of satisfactory (or comparable) performance ratings from the minimum three projects of similar scope and magnitude discussed above.¹ *Id.* at 61.

After corrective action in response to an earlier protest, DOI determined that L&J’s proposal was technically acceptable and had the lowest price, and thus awarded L&J the contract. Protest at 2-3. This protest followed.

DISCUSSION

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) and (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 agency action. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. Where a protester relies on bare assertions, without further supporting details or evidence, our Office will find that the protest ground amounts to no more than speculation and does not meet the standard contemplated by our regulations for a legally sufficient protest. *Chags Health Info. Tech., LLC*, B-420940.3 *et al.*, Dec. 14, 2022, 2022 CPD ¶ 315 at 5-6 (dismissing arguments that relied solely on the protester’s speculation); *Davis Def. Grp., Inc.*, B-417470, July 11, 2019, 2019 CPD ¶ 275 at 3 n.2 (dismissing allegations that relied on information and belief).

Moreover, our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *CapRock Gov’t Sols., Inc. et al.*, B-402490 *et al.*, May 11, 2010, 2010 CPD ¶ 124 at 24. Our timeliness rules require all information forming the basis of the protest to be submitted within 10 days of when the protester knew or should have known the grounds of protest. *Pillar Sys. Corp.*, B-408221, July 11, 2013, 2013 CPD ¶ 172 at 4-5 n.3.

Here, the protester asserts first that “[o]n information and belief,” L&J does not have sufficient relevant experience or past contract performance to satisfy the minimum acceptability standards for the relevant experience and past performance evaluation factors. Protest at 3. Talion’s protest provides no further facts, details, or evidence to

¹ The RFP further advised that offerors with no record of past performance would receive a rating of neutral for past performance and be rated as technically acceptable. *Id.* at 61.

substantiate its speculation about L&J's lack of experience. See *generally* Protest. The only supportive fact the protester alleges appears in a footnote of its response to DOI's request for dismissal, in which Talion states "L&J's experience is limited to performing contracts . . . several magnitudes smaller than the Agency's estimate of the magnitude of the Project." Resp. to Req. for Dismissal at 3 n.4. Even if this single factual allegation were enough to support the protester's argument, it was not timely raised and will not be considered.² See *CapRock Gov't Sols., Inc. et al., supra*.

Talion next argues that L&J's price proposal is so low that it is "patently unreasonable." Protest at 4. As a preliminary matter, "price reasonableness," in the context of a fixed-price contract, is an evaluation of whether the proposed price is too high. *Sterling Servs., Inc.*, B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. The protester's argument is thus best construed as one concerning the "price realism" of L&J's proposal, that is, an argument that the agency should have assessed technical risk based on the awardee's unrealistically low price. See *Cyberdata Techs., Inc.*, B-417084, Feb. 6, 2019, 2019 CPD ¶ 34 at 5.

GAO will conclude that a solicitation contemplates a price realism evaluation only if it either: (1) includes an express price realism provision; or (2) expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and the solicitation states that a quotation can be rejected for offering low prices. *E.g., id.* at 4-5. GAO will not infer the presence of a price realism requirement outside these conditions. See, *e.g., OBXtek, Inc.*, B-415258, Dec. 12, 2017, 2017 CPD ¶ 381 at 9 (rejecting applicability of a price realism analysis even where solicitation referred to "unrealistic" deviation from government estimates and "lack of understanding of the solicitation requirements," but not in the context of price). Absent a price realism provision, agencies are neither required nor permitted to conduct a price realism evaluation in awarding a fixed-price contract. *Centerra Grp., LLC*, B-414800, B-414800.2, Sept. 21, 2017, 2017 CPD ¶ 307 at 13.

The solicitation here contains no explicit price realism provision. It provides that "[p]rice will be evaluated for fair[ness] and reasonableness," and does not expressly contemplate a price realism evaluation. RFP at 61. Additionally, the language of the solicitation neither contemplates using price to evaluate an offeror's technical understanding nor states that a proposal could be rejected for offering a low price. See *id.* at 60-61.

² Talion additionally contends that it should be held to a looser evidentiary standard because it "has twice requested the Agency produce L&J's proposal for review and the Agency has failed to do so." Resp. to Req. for Dismissal at 3. However, our bid protest procedures do not permit a protester to embark on a fishing expedition for protest grounds merely because it is dissatisfied with the agency's source selection decision. *SimVentions, Inc.*, B-420967, B-420967.2, Nov. 21, 2022, 2022 CPD ¶ 304 at 9. Where, as here, a protester's allegations are based on unsupported allegations or speculation, we will summarily dismiss a protest without requiring the agency to submit a report. *Id.*

Talion contends that it is not making a price realism argument with this protest ground. Resp. to Req. for Dismissal at 4. Instead, it notes that the solicitation includes an instruction requiring offerors to describe a “realistic plan” for how they will complete the work. RFP at 60. The protester interprets this instruction to mean that DOI should have considered whether L&J’s price proposal was too low to cover the cost of performing the work. Resp. to Req. for Dismissal at 4. The instruction in question required an offeror to

describe a realistic plan, to include the means (labor, equipment, and materials) and methods (plan of work), and logical sequencing of activities (including interdependencies of activities) necessary to successfully complete the work within the required performance period . . . [and] list the specific equipment availability, crew(s) (size and composition) proposed to work concurrently, any other available resources, and daily production rate required.

RFP at 60.

Although Talion asserts this language requires the agency to consider the technical impact of the awardee’s low price, the protester’s argument is still, at root, a price realism argument. See *Cyberdata Techs.*, *supra* at 5 (noting that a protester’s argument “that the agency [was] required to consider the technical impacts of the awardee’s low price” was actually “a price realism argument”).

While the provision uses the term “realistic,” it does not contemplate that the technical factor, or the offeror’s understanding thereof, will be evaluated as a function of price. See *OBXtek, Inc.*, *supra* at 9. Nor does it contemplate that a proposal could be rejected for offering a low price. It meets none of the criteria GAO looks for to conclude a provision requires a price realism evaluation. *Cyberdata Techs.*, *supra* at 4-5. The protester’s argument that DOI failed to conduct one thus fails to state a legally sufficient basis for protest. Accordingly, this protest does not include sufficient information to establish the likelihood that the agency in this case violated applicable procurement laws or regulations.

The protest is dismissed.

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General Counsel