



Decision

Matter of: High Plains Computing, Inc-d/b/a HPC Solutions

File: B-422934

Date: December 6, 2024

Rodger Cree for the protester.

Frank S. Murray, Esq., and Caitlin Trevillyan, Esq., Foley & Lardner LLP, for Veterans EZ Info Inc., the intervenor.

Peter S. Kozlowski, Esq., Department of Veterans Affairs, for the agency.

Kenneth Kilgour, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the size status of the awardee is dismissed because the issue is not for GAO's consideration.
 2. Protest challenging the reasonableness of the agency's price evaluation is dismissed where, in this fixed price competition, the protester asserts the agency failed to conduct a price realism evaluation when the solicitation did not advise offerors that the agency would do so, and where the protester's allegation that the agency failed to conduct a reasonable unbalanced price evaluation is speculative and fails to state a valid basis of protest.
 3. Protest challenging the reasonableness of the agency's technical evaluation is denied where the record demonstrates that the protester cannot establish that it was prejudiced by the alleged errors.
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DECISION

High Plains Computing, Inc., doing business as HPC Solutions, of Denver, Colorado, protests the issuance of a task order to Veterans EZ Info Inc., of San Diego, California, under request for proposals (RFP) No. 36C10B24Q0283, issued by the Department of Veterans Affairs (VA) to provide development, testing, deployment, and security and operations support for legacy, current, and future Office of Information and Technology community care product line products. The protester challenges the awardee's size status and asserts that the agency unreasonably evaluated price and technical proposals.

We dismiss the protest in part and deny it in part.

BACKGROUND

The solicitation, set aside for service-disabled veteran-owned small businesses (SDVOSBs), was issued to General Services Administration multiple award schedule information technology professional service (GSA MAS 54151S) SDVOSB contract holders. Agency Report (AR), Tab 5, RFP¹ at 1, 129. The hybrid fixed-price, time-and-materials, and cost reimbursable task order had a term of 12 months with four 12-month option periods. *Id.* at 1, 136. All labor required for contract performance was fixed price. *Id.* at 9. Award would be made to the offeror whose proposal represented the best value to the agency, considering three factors: technical, past performance², and price. *Id.* at 135. The technical and past performance factors, when combined, were significantly more important than price. *Id.* A rating of acceptable or higher under the technical factor was necessary to be considered for award. *Id.*

As relevant to this protest, a deficiency was defined as a material failure of a proposal to meet a government requirement, or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful performance to an unacceptable level. AR, Tab 8, Source Selection Authority (SSA) Briefing Slides at 19. The VA would rate as unacceptable a proposal that “indicates a lack of understanding of the problems or an approach that cannot be expected to meet requirements or involves a very high risk.” *Id.* at 18. The VA would rate as susceptible of being made acceptable a proposal that, “as initially proposed, cannot be rated Acceptable because of minor errors, omissions or deficiencies.” *Id.* If award was made without discussions, proposals with this rating would be considered unacceptable. *Id.*

The RFP advised offerors that that the agency would verify the offeror’s calculation of total price and “may evaluate whether the Offeror has submitted unbalanced pricing.” RFP at 136. The solicitation did not provide for a price realism analysis. *See id.*

The VA received timely proposals from five firms, including the protester and the awardee. *See* AR, Tab 7, SSD at 1. The agency assigned HPC’s proposal two deficiencies and evaluated it as unacceptable under the technical factor. AR, Tab 8, SSA Briefing Slides at 30, 31, 52. The first deficiency was for the improper proposed

¹ The solicitation is identified as a request for proposals. RFP at 1. Amendment 0002 states that it amends the “RFQ.” Req. for Dismissal, exh. A, RFP amend. 0002 at 1. Throughout the record, the parties refer to both the RFP and RFQ. We refer to the RFP, in as much as that is the designation in the original solicitation. The distinction between an RFP and an RFQ is immaterial to our resolution of the protest.

² All proposals were evaluated as unknown risk under the past performance factor, which is not relevant to the protest allegations. AR, Tab 7, Source Selection Document (SSD) at 3.

use of several tools.³ *Id.* at 30. The VA assigned HPC's proposal a second deficiency because it "provided a generic approach to the Intake Process, Shared Services, and Solution Architecture Planning and Execution, however, [it] did not specifically use the CC Sample Backlog as required by the RFP." *Id.* at 31; see RFP at 131-132. In addition to these two deficiencies, the agency assigned the protester's proposal one significant weakness and no strengths or significant strengths. *Id.* at 30-31.

The agency evaluated the awardee's proposal as good under the technical factor. *Id.* at 52. The awardee's proposed price of \$158,350,284 was less than half of the protester's proposed price of \$450,040,375. *Id.* The source selection authority found that the awardee's proposal, which was the highest technically rated and lowest priced, represented the best value to the agency. AR, Tab 7, SSD at 8. The agency issued the task order to the awardee, and this protest followed.

DISCUSSION

HPC challenges the size status of the awardee and the reasonableness of the price and technical proposal evaluations. As discussed below, we dismiss the first two allegations and deny the third.

Size Status Challenge

The protester argues that, as of the date of proposal submission, Veterans EZ was no longer a small business. Protest at 1. The agency requests dismissal of this argument, asserting that GAO's bid protest regulations are explicit that challenges to the size status of a particular firm are not for our consideration. Req. for Dismissal at 5, *citing* 4 C.F.R. § 21.5(b)(1) (noting that "[c]hallenges of established size standards or the size status of particular firms. . . may be reviewed solely by the [Small Business Administration]" and are not for GAO's consideration). We agree with the VA, and we dismiss this allegation.

Price Evaluation

HPC asserts that the agency conducted an unreasonable price evaluation that failed to appreciate that the awardee submitted "a significantly understated" price and that the awardee's price was unbalanced. Protest, exh. B, Unreasonable Price Evaluation at 1. The VA requests dismissal of this allegation, contending that it is an untimely challenge to the terms of the solicitation or wholly speculative. Req. for Dismissal at 6-7. As explained below, we dismiss this allegation, as well.

The assertion that the VA failed to account for an unrealistically low price is, essentially, a claim that the agency failed to conduct a reasonable price realism analysis. See

³ The agency identified the specific tools by name in documentation provided to the protester and our Office; our discussion in this decision is more general to avoid revealing information regarding the protester's technical approach.

PricewaterhouseCoopers Public Sector LLP, B-415129.3, July 31, 2018, 2018 CPD ¶ 272 at 3 (noting that argument that agency should have found awardee's price too low is essentially a price realism argument).

As a general matter, when awarding a fixed-price order or contract, an agency is only required to determine whether offered prices are fair and reasonable. FAR 15.402(a). An agency's concern in making a price reasonableness determination focuses primarily on whether the offered prices are higher than warranted, as opposed to lower. *Facility Servs. Mgmt.*, B-420102.3, Mar. 29, 2022, 2022 CPD ¶ 93 at 6. While an agency may conduct a price realism analysis in awarding a fixed-price contract or task order for the limited purpose of assessing whether an offeror's or vendor's low price reflects a lack of technical understanding or risk, offerors or vendors must be advised that the agency will conduct such an analysis. FAR 15.404-1(d)(3); *Facility Servs. Mgmt.*, *supra*. If the solicitation does not contain an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the solicitation: (1) states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and (2) states that a proposal can be rejected or assessed technical risk for offering low prices. *Facility Servs. Mgmt.*, *supra* at 6-7. Absent such a solicitation provision, agencies are neither required nor permitted to evaluate price realism in awarding a fixed-price contract. *Id.*

The labor hours for this services contract are fixed price. RFP at 9. The solicitation contains neither an express provision for a price realism analysis nor the statements noted above that place an offeror on notice that the agency contemplates a price realism analysis. See *id.* at 136. For that reason, the agency was precluded from conducting a price realism analysis. To the extent HPC argues that the VA failed to assess whether the awardee's price was too low, the allegation is dismissed for failure to state a valid basis of protest. 4 C.F.R. §§ 21.1(c)(4) and (f); *Quadrant Training Solutions, JV*, B-422339, May 7, 2024, 2024 CPD ¶ 116 at 6 n.5.

HPC also argues that the awardee's pricing was unbalanced. Protest, ex. B, Unreasonable Price Evaluation at 1. The RFP defined an "unbalance price" as "one where the price of one or more contract line items is significantly overstated or understated and which will result in the Government paying an unreasonably high price for contract performance or otherwise present an unacceptable level of risk to the Government." RFP at 140. HPC contends that, had the agency conducted a proper unbalanced pricing analysis, it would have found "the possibility" of one of more errors in the awardee's pricing, such as: changes to the hours on the time & materials (T&M) tab; failure to bid on all T&M positions; changes to calculations; or use of an outdated Excel spreadsheet for pricing. Protest, ex. B, Unreasonable Price Evaluation at 1. The first three possible errors, according to the protester, are the result of the VA's failure to lock the cells in the Excel spreadsheet, which permitted the awardee to submit a pricing proposal that failed to comply with the RFP's requirements. *Id.*

Fundamentally, this is not an argument that the agency's price analysis failed to uncover meaningfully unbalanced pricing. See Req. for Dismissal at 6-7 (arguing that

“[c]ompliance with the [RFP], and unbalanced pricing, are separate issues, neither of which are fully explained by the protester”). As the agency argues, the protester does not assert that an imbalance in the awardee’s price will lead to the government paying an unreasonably high price; PHC’s overriding concern, to the contrary, is that the awardee’s price is too low. See *id.* at 7-8. We agree with the VA that HPC’s unbalanced pricing allegation is a variation of the allegation, discussed and dismissed above, that that awardee’s price is too low. *Id.*

HPC’s allegation that the agency failed to ensure a fair competition by failing to lock the spreadsheet cells is an untimely challenge to the terms of the solicitation. If the protester had concerns about the offerors’ ability to modify the spreadsheet, HPC needed to assert that challenge to the terms of the solicitation prior to the closing date for proposal submission. 4 C.F.R. § 21.2(a)(1) (requiring that protests based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time). We dismiss this allegation. In any event, the VA states that “all offerors in fact complied with the [RFP] in the required Excel Spreadsheet columns,” and the agency argues that “HPC’s beliefs otherwise without any basis at all is mere fishing and speculative reasoning that cannot support its claims.”⁴ Req. for Dismissal at 7. We agree with the agency that the claim that the awardee failed to comply with the RFP--which is predicated on an untimely challenge to the terms of the solicitation--is speculative and therefore fails to state a valid basis of protest, and we dismiss it. 4 C.F.R. § 21.5(f).

Technical Evaluation

Lastly, HPC challenges the agency’s assessment of a significant weakness and two deficiencies in the protester’s proposal under the technical factor.⁵ Protest, exh. A, Unreasonable Technical Evaluation. Even assuming there is merit to these challenges to the technical evaluation, HPC has failed to make a showing of competitive prejudice.

Competitive prejudice is an essential element of every viable protest. *Instrument Control Serv., Inc.*, B-285776, Sept. 6, 2000, 2000 CPD ¶ 186 at 4. Where the record does not demonstrate that, but for the agency’s actions, the protester would have had a reasonable chance of receiving the award, our Office will not sustain a protest, even if a deficiency in the procurement is found. *Id.*

⁴ HPC does not respond to the VA’s contention that all vendors complied with the RFP’s requirements. See Resp. to Req. for Dismissal at 7.

⁵ In its response to the request for dismissal, HPC challenges the VA’s failure to award the protester’s proposal numerous strengths. Resp. to Req. for Dismissal at 3. At the time the protester filed its protest, it was on notice that the VA had identified no strengths or significant strengths in HPC’s proposal. See Protest, exh. A.1, Initial Technical Evaluation at 2 (noting that the VA had assigned HPC’s proposal no strengths or significant strengths). HPC filed its protest on September 15 and its response to the
(continued...)

HPC's proposal under the technical factor was evaluated as containing no strengths or significant strengths. The awardee's proposal was assessed one significant strength, two strengths, and one weakness and was rated good under the technical factor. AR, Tab 7, SSD at 4-5. Even without the weakness and deficiencies, HPC's proposal would not be as highly technically rated as the awardee's; the protester's price of \$450,040,375 would still be more than twice the awardee's proposed price of \$158,350,284. We can thus find no reasonable possibility of prejudice that would justify disturbing the award, even assuming these protest contentions were meritorious, and we deny these challenges to the technical evaluation.⁶

The protest is dismissed in part and denied in part.

Edda Emmanuelli Perez
General Counsel

request for dismissal on October 25. Because HPC waited until more than 10 days after it knew the basis for its allegation that the agency had unreasonably failed to assign strengths to the protester's proposal, we dismiss this allegation as untimely. 4 C.F.R. § 21.2(a)(2).

⁶ In any event, the challenges HPC asserts to the reasonableness of the assessment of the deficiencies provide no basis on which to find the allegations have merit. For example, with respect to the deficiency assessed HPC's proposal for the protester's failure to use the CC Sample Backlog, as required by the RFP, the VA argues that HPC "only produces excuses and disagreements as to why it thinks this deficiency is unreasonable." Memorandum of Law at 10. We agree. Although the protester maintains that its proposal contained content that "when read in context, fully addresses the government's ask," it does not assert it followed this solicitation instruction. Protest, exh. A, Unreasonable Technical Evaluation at 1; see *id.* at 8-13. With regard to the deficiency for the use of improper tools, the protester disputes only a subset of the agency findings on which the deficiency was based. Because the protester has not challenged several of the underlying factual bases for the deficiency, we find its objection to the deficiency to be legally insufficient.