



## Decision

**Matter of:** Mission Analytics, LLC

**File:** B-423140

**Date:** December 26, 2024

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Michael Winters, for the protester.  
Brandon Dell’Aglia, Esq., and Jon J. Gottschalk, Esq., Department of Health and Human Services, for the agency.  
Suresh S. Boodram, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest alleging that the solicitation should have been set aside for small business concerns is dismissed as untimely where the solicitation issued following the protester’s objections submitted in response to an earlier proposed sole-source award did not specify that it was set aside for small business concerns and the protester did not timely challenge the terms of the solicitation before the closing time for the submission of quotations.
2. Protest challenging the agency’s evaluation of quotations and source selection decision is denied where the agency’s evaluation and resulting award decision were consistent with the terms of the solicitation.

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### DECISION

Mission Analytics, LLC, a service-disabled veteran-owned small business (SDVOSB) of Falls Church, Virginia, protests the award of a contract to Sharp Electronics Co. (Sharp), of Montvale, New Jersey, conducted under request for quotations (RFQ) No. 24-011595, issued by the Department of Health and Human Services, National Institutes of Health for multimedia devices for patient engagement and training. The protester contends that the RFQ should have been set aside for small businesses and that the agency’s evaluation and resulting award decision were unreasonable.

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

## BACKGROUND

On September 4, 2024, the agency posted a notice of intent to issue a sole-source contract to Sharp on Sam.gov.<sup>1</sup> Agency Report (AR), Tab 2.1, Notice of Intent to Solicit Sole-Source. On September 10, the protester submitted to the agency objections to the notice challenging the agency's decision to award a sole-source contract for the requirement. AR, Tab 2.2, Mission Analytics Comments. The protester further requested that the requirement be competitively solicited as a small business set-aside. *Id.* The agency responded to the protester the next day, and confirmed in two separate emails that the agency would cancel the notice of intent to issue a sole-source award and subsequently request a competitive quotation from the protester. AR, Tab 2.3, Agency Response to Objection at 1; Protest, exh. 3, Email from Agency, at 1. The agency subsequently cancelled the notice of intent to sole-source the requirement.

On September 12, the agency emailed a statement of work (SOW) and the RFQ to three vendors, including the protester and awardee. AR, Tab 3.2, RFQ Email; Contracting Officer's Statement (COS) at 1. The RFQ did not indicate the procurement method or basis for award that the agency intended to use, nor did it indicate that the procurement had been set aside for small business concerns. However, the agency subsequently explained that because the anticipated value of the procurement was below the simplified acquisition threshold, the agency utilized the simplified commercial acquisition procedures of FAR part 13, the procurement was conducted on an unrestricted basis, and award was made on a lowest-price, technically acceptable (LPTA) basis. COS at 3; Memorandum of Law (MOL) at 2; Federal Procurement Database System (FPDS) Entry for Award No. 75N90024P00682, available at <https://www.fpds.gov/common/jsp/LaunchWebPage.jsp?command=execute&requestid=228657217&version=1.5> (last visited Dec. 16, 2024).

Relevant to this protest, the initial SOW specified that "[t]raining is included for the lifetime of the agreement," while also including under the heading "TRAINING" the indication of "N/A." AR, Tab 3.2, Sept. 12 RFQ Email at 3. On September 12, the protester submitted questions to the agency which, in part, asked whether the RFQ was set aside for small businesses. AR, Tab 3.3, Email Questions at 1. The agency responded to some of the protester's questions but did not specifically respond to the protester's inquiry regarding whether the solicitation had been set aside for small business concerns. *Id.*; MOL at 3.

The protester and awardee submitted timely quotations by the amended RFQ's September 17 deadline. On September 24, the agency emailed all potential vendors with additional details regarding the delivery and training requirements under the RFQ.

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<sup>1</sup> SAM.gov is the current governmentwide point of entry (GPE) which serves as the single point where government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. Federal Acquisition Regulation (FAR) 2.101; *Excelsior Ambulance Serv., Inc.*, B-421948, Sept. 27, 2023, 2023 CPD ¶ 220 at 2 n.1.

AR, Tab 3.4, Sept. 24 Email at 1. The agency's email clarified, in part, that device operation and integration training was required and that small group presentations and repeat trainings could be needed throughout the first two years of contract performance. *Id.* In this regard, the agency provided that "[s]mall group presentations may be needed 1-3 at a time." *Id.* The agency subsequently allowed vendors to either submit a revised quotation by September 26 or confirm that the updated requirements were already included in their previously submitted quotations. *Id.*

On September 25, Sharp confirmed that training would be available as required under its previously submitted quotation. AR, Tab 5.1, Sharp Quotation at 9. Specifically, in response to the requirements for small group presentations and repeat training, Sharp answered "YES – training will be available as required in the above statement," and "YES – ongoing support will be available." *Id.* On September 26, the protester submitted two revised, alternative quotations. Relevant here, both of the quotations included base prices of \$16,519.98, which included one day of training; both quotations also offered two optional small-group training sessions, at additional costs, for total prices of \$20,619.98. AR, Tab 4.1, Quotation A Mission Analytics at 4; Tab 4.2, Quotation B Mission Analytics at 4. The awardee's quotation, inclusive of training, was priced at \$17,040. AR, Tab 5.1, Sharp Quotation at 2. On October 18, the contracting officer notified the protester that award was made to Sharp. AR, Tab 7.1, Unsuccessful Offer Notice at 1. On October 28, Mission Analytics filed this protest with our Office.

## DISCUSSION

Mission Analytics raises two primary bases of protest. First, the protester alleges that the agency unreasonably failed to set aside the RFQ for small businesses. Second, the protester argues that the agency failed to make the award on a LPTA basis. Specifically, the protester contends that its quotation was technically acceptable and should have been evaluated as offering the lowest price. We address these arguments in turn.

### Small Business Set-Aside

Mission Analytics first challenges the agency's decision to not set aside the RFQ for small businesses. Protest at 1. The protester contends that the agency agreed to solicit the RFQ as a small business set-aside in response to the protester's objections to the subsequently withdrawn notice of intent to issue a sole-source contract. Comments at 2-3. We dismiss this protest ground as untimely.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Our timeliness rules specifically require that a protest 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. 4 C.F.R. § 21.2(a)(1); *Sikorsky Aircraft Corp.*, B-416027, B-416027.2, May 22, 2018, 2018 CPD ¶ 177 at 6. A patent solicitation ambiguity exists where the solicitation contains an obvious, gross, or glaring error. *International Bus. Machines Corp.*, B-417596.10, Mar. 17, 2021, 2021 CPD ¶ 127 at 15. A vendor has an

affirmative obligation to seek clarification of a patent ambiguity prior to the first due date for submissions responding to a solicitation following introduction of the defect into the solicitation. 4 C.F.R. § 21.2(a)(1); *Pitney Bowes, Inc.*, B-294868, B-294868.2, Jan. 4, 2005, 2005 CPD ¶ 10 at 5.

Here, nothing on the face of the RFQ indicated that the solicitation had been set aside for small business concerns and the agency declined to clarify the set-aside status of the procurement in response to the protester's pre-award question. If Mission Analytics believed that the RFQ should have been set aside for small businesses, it had an affirmative obligation to challenge the terms of the RFQ prior to the September 26 quotation submission deadline. Mission Analytics argues that this protest ground is timely because it first raised the small business set-aside issue in its September 11 email. Comments at 1-2. However, the protester's September 11 email challenged the sole-source notice, not the RFQ that was issued two days after the email, on September 13.<sup>2</sup> AR, Tab 2.2, Mission Analytics Comments. Further, the protester reraised the issue in its September 12 email when it asked whether the RFQ was set aside and the agency did not respond. AR, Tab 3.3, Email Questions at 1; MOL at 3. When an agency fails to clarify a patently ambiguous term or solicitation provision, or otherwise satisfactorily resolve a firm's questions, a firm is required to raise its concerns prior to the next closing date. *International Bus. Machines Corp.*, B-417596.10, Mar. 17, 2021, 2021 CPD ¶ 127 at 17; *Leeward Constr. Corp.*, B-420504, Mar. 3, 2022, 2022 CPD ¶ 75 at 6 n. 3 (dismissing as untimely protester's argument that the contracting officer failed to adequately address its request for clarification). In this case, Mission Analytics elected not to challenge the agency's failure to clarify the set-aside status of the RFQ, but, rather, elected to compete notwithstanding. Thus, because the

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<sup>2</sup> In any event, even if we were to consider the protester's September 11 email as an agency-level protest, we would nevertheless still find this protest untimely. In its response email to the protester, the agency expressed that it generally agreed with the protester's concerns and would cancel the notice of intent to issue a sole-source award, but the agency did not state that it was going to resolicit the requirement as a small business set-aside. Protest exh. 3, Email from Agency, at 1. Once the agency issued the solicitation without any indication it was set aside for small businesses and failed to clarify the set-aside status in response to the protester's subsequent inquiry, it was incumbent on the protester to challenge the adverse action taken in response to its agency-level protest within 10 days. See 4 C.F.R. § 21.2(a)(3) (requiring that any subsequent protest to GAO following a timely agency-level protest must be filed within 10 days of actual or constructive knowledge of initial adverse agency action). Thus, even if the September 11 email was an agency-level protest, the protester knew or reasonably should have known that the agency was taking an adverse position with respect to the protester's assertion that the procurement should have been set aside for small businesses no later than the date on which the agency declined to clarify the set aside status of the solicitation that was otherwise silent on the matter. As this protest was filed almost a month after the pre-award exchanges on the solicitation, it is untimely.

protester did not challenge the RFQ's non set-aside status until after the quotation submission deadline, this protest ground is untimely and dismissed.

### Evaluation and Award Decision

Mission Analytics next argues that the agency's evaluation of quotations and source selection decision were improper because the protester should have been evaluated as offering the LPTA quotation. Specifically, the protester argues that the agency should not have included the price of Mission Analytics's optional trainings when evaluating the protester's overall proposed price, which, without the trainings included, would have been the lowest priced quotation. Protest at 2.

The agency responds that there was nothing improper about the evaluation because the SOW and the agency's September 24 email clarification both clearly specified that training was a required element of the RFQ, and that the agency anticipated an ongoing need for training beyond a single training session. MOL at 4-5. Therefore, it was reasonable for the agency to include the protester's optional trainings as part of the protester's total price to make a fair comparison between the prices proposed by the protester and awardee. *Id.*

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate quotations or substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *OPTIMUS Corp.*, B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with an agency's evaluation judgments, without more, does not establish that an evaluation was unreasonable. *Electrosoft Servs., Inc.*, B-413661, B-413661.2, Dec. 8, 2016, 2017 CPD ¶ 7 at 5.

Here, as discussed above, the SOW specifically required quotations to include training as part of its total price. AR, Tab 3.2, Sept. 12 RFQ Email at 3. Moreover, the agency's September 24 email further clarified that training would be required and that repeat trainings could be needed throughout the two years of the contract. AR, Tab 3.4, Sept. 24, Email at 1. The awardee's response to the September 24 email made clear that the awardee would provide the required training at no additional cost to its \$17,040 quotation. AR, Tab 5.1, Sharp Quotation at 9. In contrast, Mission Analytics provided that it would provide one day of training as part of its proposed base fixed-price, but that any additional training would require additional compensation. AR, Tab 4.1, Quotation A Mission Analytics at 4; Tab 4.2, Quotation B Mission Analytics at 4. Accordingly, it was reasonable for the agency to include the protester's optional trainings as part of its price comparisons and to compare that price, \$20,619.98, to the awardee's price of \$17,040, which was inclusive of all trainings.

In short, we find nothing unreasonable in the agency's determination that Mission Analytics' quotation was higher priced than the awardee's quotation. Therefore, we deny the protest on this basis.

The protest is dismissed in part and denied in part.

Edda Emmanuelli Perez  
General Counsel