

PRICE REALISM DETERMINATION NOT REQUIRED ON FIXED-PRICE CONTRACT

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The Government Accountability Office (“GAO”) recently reiterated its prior holdings that unless there is a provision in the solicitation providing for a price realism analysis (or states that low prices will result in rejection of a proposal), agencies are neither required nor permitted to conduct a price realism analysis in awarding a fixed-price contract.

The Forest Service issued a request for quotations (“RFQ”) for establishment of multiple blanket purchase agreements for wildland firefighter services. The RFQ contemplated fixed price contracts, and did not require an explicit price realism provision, nor did it include a provision that allowed the agency to reject offer if they were priced too low. Instead, the RFQ said this:

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.

The Forest Service did not conduct any price realism analysis. Instead, it determined if prices were reasonable using established 2020 rates from the Oregon Department of Forestry.

In denying the protest, the GAO noted that the purpose of a price realism analysis is to determine if prices are too low such that there is a risk of poor performance or to confirm a contractor’s understanding of the requirements of the solicitation, citing FAR 15.505-1(d). The GAO noted that in the absence of an express price realism provision, the GAO will only conclude that a solicitation contemplates a price realism analysis where that solicitation explicitly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and where the proposal or quote can be rejected for offering low prices. The GAO concluded that “[a]bsent a solicitation providing for a price realism analysis, agencies are neither required nor permitted to conduct one in awarding a fixed price contract.”

Takeaway. The GAO will only insist that an agency conduct a price realism analysis on a fixed-price contract where the solicitation contains an express price realism provision. Even where a solicitation states that the agency will examine whether the price reflects an understanding of the solicitation requirements (but does not require a price realism analysis), the GAO will only require a price realism analysis where the solicitation states that the agency can reject a proposal for offering low prices.

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