



United States Government Accountability Office
Washington, DC20548

Decision

Matter of: Division Laundry and Cleaners, Inc.

File: B-311242

Date: May 19, 2008

David F. Barton, Esq., The Gardner Law Firm, for the protester.
Gary R. Allen, Esq., Department of the Air Force, for the agency.
Paula A. Williams, Esq., and Ralph O. White, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency had a reasonable basis to cancel small business set-aside and resolicit its requirement on an unrestricted basis where the record supports the reasonableness of agency's determination that prices offered by eligible small business concerns were unreasonable.

DECISION

Division Laundry and Cleaners, Inc. protests the Department of the Air Force's decision to cancel request for proposals (RFP) No. FA3047-08-R-0001, issued as a small business set-aside for commercial bulk laundry and dry cleaning services at Lackland Air Force Base and other locations in San Antonio, Texas. Division asserts that the cancellation was improper based on the agency's unreasonable determination that its proposed price was excessive.

We deny the protest.

As amended, the RFP anticipated award of a fixed-price requirements contract for a period of 4 years, to the offeror whose proposal was considered the "best value." RFP at 143. The RFP advised that award would be made without conducting discussions unless the agency otherwise determined discussions to be necessary. *Id.* at 147.

Three offerors, including Division, submitted proposals by the closing date, one of which was rejected because the offeror was not a small business. The contracting officer (CO) reviewed the proposals of the two eligible small business concerns and concluded that each offeror's proposed price exceeded the government estimate by

more than 35 percent. The CO also compared the small business offerors' prices to the proposed price of the ineligible large business firm in determining that the prices offered by both small business concerns were not fair and reasonable. CO's Statement at 3. After the CO concluded that she had no realistic expectation that the significant difference between the proposed prices and the government estimate could be negotiated to more reasonable prices through discussions, she canceled the solicitation. Agency Report (AR) exh. 8, Determination and Findings at 2-3. Thereafter, the CO sought and received approval from the Small Business Administration's small business specialist to withdraw the set-aside and resolicit the requirements using full and open competition procedures. Id. at 15.

Division challenges the agency's decision to cancel the solicitation rather than conduct discussions, asserting that the Air Force improperly evaluated its price against a flawed estimate of the government's needs. In this regard, Division contends that the government estimate reflects considerably lower estimates for various solicitation requirements such as the pick-up and return laundry requirements at each location. Specifically, the protester asserts "on information and belief" that the incumbent contractor is not counting the actual number of items in each bundle of cleaning, as required by the canceled RFP which, if done according to the solicitation's requirements, would require more manpower and time, resulting in higher costs. Protester's Comments at 3-4.

A determination of price reasonableness for a small business set-aside is within the discretion of a CO, and we will not disturb such a determination unless it is clearly unreasonable or there is a showing of fraud or bad faith on the part of contracting officials. A. Hirsh, Inc., B-271829, July 26, 1996, 96-2 CPD ¶ 55 at 2. In making such a determination, the CO may consider such factors as the government estimate, the procurement history for the solicited services, the current market climate, and the "courtesy bid" of an otherwise ineligible large business offeror. Id.; Nutech Laundry & Textiles, Inc., B-291739, Feb. 10, 2003, 2003 CPD ¶ 34 at 4; see also, Federal Acquisition Regulation (FAR) §§ 19.202-6, 15.404-1(b).

Furthermore, in view of the congressional policy favoring small businesses, contracts may be awarded under small business set-aside procedures to small business firms at premium prices, so long as those prices are not unreasonable. Hardcore DuPont Composites, LLC, B-278371, Jan. 20, 1998, 98-1 CPD ¶ 28 at 3.¹ The determination of whether a small business price premium is unreasonable depends on the circumstances of each case, Olsen Env'tl. Servs., Inc., B-241475, Feb. 6, 1991, 91-1 CPD ¶ 126 at 2-3, and we have found cancellations proper where the protester's

¹ We note that we have equated the concept of price reasonableness with "fair market price" in the context of a small business set-aside. See American Imaging Servs., B-238969, B-238971, July 19, 1990, 90-2 CPD ¶ 51 at 2.

price exceeded the government estimate by as little as 7.2 percent. See Building Maint. Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233 at 4.

The agency's explanation here provides a reasonable basis for the agency's decision to cancel the solicitation. As previously noted, the agency canceled the RFP after concluding that both small business offerors' prices were unreasonable, given that their proposed prices were each more than 35 percent above the government estimate for this requirement.² While Division challenges the reasonableness of the government estimate, the protester has provided no credible evidence that the government estimate was flawed or otherwise inaccurate. In any event, Division's challenge to the government estimate based on information and belief that the incumbent contractor is not performing the requirement that the contractor verify and count all laundry and dry cleaning items picked-up and returned to each location provides no basis to question the validity of the estimated solicitation requirements, or the agency's reliance on the government price estimate derived from those projections to determine the reasonableness of the protester's proposed price.

Moreover, the agency also compared Division's price to the other offerors' prices. As stated previously, the FAR recognizes comparison of offerors' prices to one another as a permissible technique for determining price reasonableness. FAR §§ 19.202-6, 15.404-1(b); Stitzel Co., B-251560, Apr. 13, 1993, 93-1 CPD ¶ 315 at 2. Given that Division's offered price was significantly higher than the price of the other small business and the ineligible large business firm, the comparison of offerors' prices to one another clearly furnished the CO with an additional valid basis for finding that Division's price was unreasonable.

Finally, the protester asserts that the agency was required to conduct discussions given the wide discrepancy in offered prices and the government estimate. Protester's Comments at 3. There is generally no obligation that a contracting agency conduct discussions where, as here, the RFP specifically informed offerors of the agency's intent to award a contract on the basis of initial proposals without conducting discussions. See Colmek Sys. Eng'g, B-291931.2, July 9, 2003, 2003 CPD ¶ 123 at 7. A CO's discretion in deciding not to hold discussions is quite broad, and our Office will review the exercise of that discretion only to ensure that it was reasonably based on the particular circumstances of the procurement. *Id.* Division has provided no basis, nor have we found one in the record, to call into question the

² The amount by which the protester's price exceeded the government's estimate was redacted from the agency report in this protest. Because the agency anticipates conducting a recompetition here, we need not disclose the actual percentage by which the small business offerors' prices exceeded the government estimate. We have reviewed the numbers in camera, and the Air Force has agreed that we may disclose that both firms' prices exceeded the government estimate by at least 35 percent.

agency's decision not to engage in discussions because of the CO's belief that negotiations would not result in obtaining reasonable prices from the small businesses.

The protest is denied.³

Gary L. Kepplinger
General Counsel

³ Regarding the protester's allegations of bias, government officials are presumed to act in good faith and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Advanced Sci., Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52 at 17; Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6. Here, the record does not support the protester's allegation of bias.