



Decision

Matter of: Petro Star, Inc.

File: B-401108

Date: April 29, 2009

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Howard Kaufer, Esq., Defense Logistics Agency, for the agency.

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DIGEST

Awardee's challenge to the amount of its contract price to supply military fuel requirements is dismissed because it raises a matter of contract administration over which we do not have jurisdiction.

DECISION

Petro Star, Inc., of Anchorage, Alaska, a small business concern, protests that its award price under its contract No. SP0600-08-R-0161 with the Defense Logistics Agency, Defense Energy Support Center (DESC), for military fuel requirements for the West Coast and Rocky Mountain regions of the United States, should be increased.

We dismiss the protest because it raises a matter of contract administration over which we do not exercise jurisdiction.

On April 17, 2008, DESC issued solicitation no. SP0600-08-R-0161 for prices to supply bulk petroleum products to various military destinations. Each destination was separately listed in the solicitation by item. The request for proposals (RFP) provided that 35.47 percent of the procurement was set aside for small business concerns. The remainder of the procurement was subject to full and open competition. Solicitation clause I237.06, Notice of Partial Small Business Set-Aside (Deviation Mar 1999), specified the manner in which the set-aside prices would be determined:

(c) Set-Aside Award Procedure

(1) The price for the small business set-aside portion will be negotiated by the Contracting Officer based upon prices the Government would otherwise pay under this solicitation had there been no set-aside for supply of the location at which the set-aside is placed Awards will be made to the small business concern whose offer is determined by this evaluation to be low without further negotiations.

RFP at A-85.

Upon evaluation of the offers, Petro Star was determined to be the low offeror for the supply of JP-8 jet fuel at Elemendorf Air Force Base, Anchorage, Alaska, which was Item 0207 of the solicitation. However, in order for the government to receive the lowest overall price considering all solicitation items, it was determined that BP West Coast Products, LLC, a large business, should be awarded the non-set-aside portion of Item 0207, even though it was not the low offeror on that item. This was due to a solicitation provision that allowed offerors to specify a minimum quantity for award as a condition of their offers. BP's offer contained a condition for award that required it to be awarded a minimum number of gallons¹ and to satisfy BP's condition for award it was determined that it should receive the non-set-aside portion of Item 0207.

BP's award for Item 0207 was made at the price of \$2.881704 per gallon. In accordance with the solicitation's partial small business concern set-aside procedures, Petro Star was then awarded the set-aside volume for Item 0207, at its offered price of \$2.825179. This award was made on September 18. Petro Star began performance shortly thereafter and it has made a delivery of fuel under the contract.

On October 6, Petro Star filed an agency-level protest with DESC, which was dismissed as untimely. On February 17, 2009, Petro Star filed a protest with our Office alleging that under Clause I237.06 (quoted above) DESC should have permitted Petro Star to increase its proposed price for the set-aside portion to match BP's higher price for the unrestricted portion. What Petro Star seeks here is an increase in its contract price, that is, reformation of its contract. This is a matter of contract administration for which our Office does not have jurisdiction.² FruCon Construction Corp., B-253882, Oct. 1, 1993, 93-2 CPD ¶ 200 at 4-5. Our Office considers bid protest challenges to the award or proposed award of contracts.

¹ Petro Star did not specify a minimum quantity in its offer.

² The protester notes that our Office has previously decided a protest involving the application of the solicitation clause that it alleges the agency misinterpreted in awarding its contract. U.S. Oil & Refining Co., B-168576, B-168576.2, Apr. 28, 1971. However, the case relied on by the protester was decided before March 1, 1979, the date the Contract Disputes Act became effective, and is not applicable here.

31 U.S.C. § 3552 (2006). In exercising this authority, we do not review matters of contract administration (with exceptions not relevant here), which are within the discretion of the contracting agency and are, under the Contract Disputes Act of 1978, for review by a cognizant board of contract appeals or the Court of Federal Claims. Bid Protest Regulations, 4 C.F.R. § 21.5(a) (2008); Hawker Eternacell, Inc., B-283586, Nov. 23, 1999, 99-2 CPD ¶ 96 at 3.

The protest is dismissed.

Gary L. Kepplinger
General Counsel