



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Trade Links General Trading and Contracting, WLL

File: B-405182

Date: September 1, 2011

Jason Mohiuddin, Trade Links General Trading and Contracting, WLL, for the protester.

Amanda M. Willis, Esq., Department of the Air Force, for the agency.

Cherie J. Owen, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly cancelled solicitation where the agency could not determine that any of the offerors' proposed prices, which significantly exceeded the government estimate, were fair and reasonable.

DECISION

Trade Links General Trading and Contracting, WLL of Meshrif, Kuwait, protests the decision of the Department of the Air Force to cancel request for proposals (RFP) No. FA5703-11-R-0027 for mail porter services at Kuwait City International Airport. Trade Links contends that the cancellation was unreasonable.¹

We deny the protest.

The Air Force issued RFP No. FA5703-11-R-0027 on May 4, 2011, seeking mail porter services at Kuwait City International Airport. As relevant here, the RFP stated that

¹ The protester proceeded with its protest pro se and therefore did not have an attorney who could obtain access to nonpublic information pursuant to the terms of a protective order. Accordingly, our discussion of the facts of this protest is necessarily general in nature to avoid reference to nonpublic information. Our conclusions, however, are based on our review of the entire record, including nonpublic information.

offerors' prices must be reasonable in comparison to estimates and prior prices paid. The RFP also stated that offerors' proposals would be reviewed to determine if the proposed prices were reasonable, and that to be eligible for award, an offeror's price must be determined to be fair and reasonable in accordance with Federal Acquisition Regulation (FAR) § 13.106-3. RFP at 7.

The agency received six proposals by the proposal due date and determined that three of them were technically acceptable. Of the technically acceptable proposals, the lowest priced one was significantly higher than the government estimate.

After comparing the proposals to the government estimate and the prior contract price, the contracting officer determined that each of the proposals was unreasonable as to price. Contracting Officer's Statement at 2. The contracting officer also viewed the offerors' high prices as an indication that none of the three technically acceptable offerors had a clear understanding of the requirement. Id. On June 7, the agency initially extended the proposal due date to allow for the submission of additional proposals, but subsequently decided to cancel the solicitation altogether to allow the agency more time to reevaluate the requirement and revise the solicitation. Id. This protest followed.

The protester contends that the agency's decision to cancel the RFP was unreasonable. The protester also argues that it was unreasonable for the agency to compare the offerors' prices to the government estimate or the prior contract price because the agency did not offer a site visit and did not set forth facilities requirements in the RFP. Comments at 1. Therefore, the protester claims, offerors were lead to believe that only one facility, owned by National Aviation Services (NAS) could be used. Id.

A procuring agency has broad authority to cancel a solicitation issued under negotiated procedures and need only establish a reasonable basis for cancellation. Bahan Dennis, Inc., B-249496.3, Mar. 3, 1994, 94-1 CPD ¶ 184 at 3. If an agency cannot purchase at a "fair and reasonable" price, as required by the FAR, then cancellation is warranted. Id.; see FAR §15.402 (price must be "fair and reasonable"). A determination of price reasonableness is a matter of agency discretion, involving the exercise of business judgment, which our Office will not question unless it is shown to be unreasonable. Selecta Corp., B-252182, May 26, 1993, 93-1 CPD ¶ 421 at 2; Sletager, Inc., B-240789.6, Oct. 11, 1991, 91-2 CPD ¶ 328 at 2. In determining price reasonableness, an agency may consider a number of factors, including prior contract history and the government estimate. Vitronics, Inc., B-237249, Jan. 16, 1990, 90-1 CPD ¶ 57 at 2; see FAR §15.404-1(b). In this regard, we have found cancellations proper where the protester's price exceeded the government estimate by as little as 7.2 percent. Nutech Laundry & Textiles, Inc., B-291739, Feb. 10, 2003, 2003 CPD¶ 34 at 4 (citing Building Maint. Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233 at 4).

Based upon our review of the record, there is no basis to find unreasonable the Air Force's determination that none of the prices were fair and reasonable. As noted above, the agency compared the offerors' prices to the government estimate and the prior contract price. Given that the lowest proposed price exceeded the government estimate by a significant amount, we think the agency could reasonably conclude that the offered prices were not reasonable and that the offerors did not clearly understand the requirements of the RFP.

Finally, with regard to the protester's claim that the RFP misled offerors because it caused them to believe that the NAS warehouse was the only acceptable facility, we find that the RFP was clear as to the facility requirements. In the RFP's questions and answers, a potential offeror asked whether the NAS warehouse would continue to be used. The agency responded that "[t]he new contractor will be responsible for obtaining their own warehouse/office space located in the secure side of Kuwait City International Airport." Protester's Comments, Attach. 5, Additional Mail Porter Questions and Answers, at 1, 2-3. Therefore, we find no merit to the protester's claim that the RFP misled offerors into proposing higher prices based on the assumption that the NAS facility was required to be used.

The protest is denied.

Lynn H. Gibson
General Counsel