GAO

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548



# Decision

**Matter of:** Wilson 5 Service Company, Inc.

**File:** B-285343.2; B-285343.3

**Date:** October 10, 2000

Robert G. Fryling, Esq., and Edward J. Hoffman, Esq., Blank Rome Comisky & McCauley, for the protester.
Robert J. McCall, Esq., General Services Administration, for the agency.
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## DIGEST

Protester's contention that its proposal was improperly excluded from the competitive range is denied where the decision to exclude the proposal from further consideration was consistent with applicable regulations, and where the protester fails to show that the evaluation--upon which the decision to exclude the proposal was based--was unreasonable or inconsistent with the stated evaluation criteria.

## DECISION

Wilson 5 Service Company, Inc. protests the exclusion of its proposal from the competitive range under solicitation for offers (SFO) No. GS-03P-00-DXC-0001, issued by the General Services Administration (GSA) for facilities engineering maintenance services for six federal buildings in the Richmond and Norfolk, Virginia areas. Wilson argues that its exclusion from the competitive range was improper because GSA did not follow the competitive range procedures identified in its source selection plan. It also argues that the evaluation of its proposal was unreasonable due to alleged discrepancies in the scores assigned by one of the evaluators, and due to the agency's erroneous conclusion that its proposal was weak when, in Wilson's view, the alleged weaknesses were only minor informational deficiencies.

We deny the protest.

The GSA issued this solicitation via its Electronic Posting System on March 14, 2000, and anticipated award of a fixed-price 1-year contract followed by one 2-year option, and three 3-year options, for a total performance period of 12 years. SFO §§ F.2, 4. The SFO advised potential offerors that GSA would "select the offeror whose

proposal offers the Greatest Value to the Government in terms of technical and pricing merit," and that technical and price would be given "approximately equal weight." SFO § M.1. It also advised that total price would be calculated using the price for all option years, and that technical merit would be calculated using a level of confidence rating (LOCR). Id. §§ M.1, 2. Four technical evaluation factors were identified by the SFO--management plan, corporate experience, qualifications of key personnel, and extent of participation of small disadvantaged business (SDB) concerns. Id., amend. 3, § M.3. Of these four factors, management plan was the most important, corporate experience and key personnel were equally important and more important than the factor for evaluating a proposal's use of SDB concerns, which was the least important evaluation factor. Id.

Although this solicitation was not reserved for exclusive small business or HUBZone[1] small business participation, it contained a cascading award preference, as described below. Specifically, the SFO provided that: (1) if competitive proposals were received from at least two HUBZone small business concerns, award would be made to a HUBZone small business; (2) if fewer than two proposals were received from eligible HUBZone small businesses, but competitive proposals were received from at least two small businesses, award would be made to a small business; and (3) if fewer than two proposals were received from qualified small business concerns, then award would be made on the basis of full and open competition among all competing offerors. SFO § I.22.

Eleven proposals were received in response to this SFO. Of the 11, 1 was submitted by a HUBZone small business concern, 6 were submitted by small businesses not considered HUBZone concerns, and 4 were submitted by large businesses. After the initial evaluation of offers, the source selection evaluation board (SSEB) concluded that the competition could not be limited to HUBZone concerns, but could likely be limited to the seven small business offerors (including the HUBZone small business concern). Technical Proposal Evaluation and Consensus Report, at 3.

After the SSEB developed consensus scores for each of the proposals submitted by a small business, and conducted a detailed review of prices, the SSEB concluded that there was a natural break in the technical merit scores between the two highest-rated small business offerors and the five remaining small businesses. In this regard, the two highest-rated offerors received LOCR scores of [deleted] and [deleted], while

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[1]Federal Acquisition Regulation (FAR) § 19.001 defines the term "HUBZone" as "a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation." To be considered for award as a "HUBZone small business concern," the offeror must be included on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration. FAR § 19.001.

the remaining offerors received scores of [deleted] (Wilson), [deleted], [deleted], [deleted], and [deleted]. Id. at 27. After consideration of prices--including analyses made with and without application of price evaluation preferences for small disadvantaged businesses, and for HUBZone businesses--the SSEB recommended that only the two highest-rated offerors be included in the competitive range. Id. at 28. Even though Wilson was the lowest-priced offeror by a slight margin when given the benefit of the price preference for small disadvantaged businesses (without the preference Wilson was the second lowest-priced offeror), the SSEB specifically concluded that despite its price, Wilson's significantly lower technical score justified its exclusion from the competitive range. Id. at 31-32. On July 21, the CO accepted the recommendation of the SSEB, and by letter dated July 25, GSA advised Wilson that it had been excluded from the competitive range. This protest followed.

Wilson's first challenge--that GSA improperly excluded its proposal from the competitive range--was initially based on the erroneous assumption that its exclusion from the competitive range was made without regard to its price. See Meridian Management Corp., B-285127, July 19, 2000, 2000 CPD ¶ 121. As described above, the record here included an analysis by the SSEB of Wilson's price as part of its recommendation to exclude the company from the competitive range. Thus, Wilson did not pursue this argument in its comments.[2]

In its comments, Wilson argues that GSA's competitive range determination was improper because it was based on the current version of FAR § 15.306(c). Protester's Comments at 3. FAR § 15.306(c)(1) allows agencies "to establish a competitive range comprised of all of the most highly rated proposals. . . ." Wilson contends that the agency's internal source selection plan outlines a competitive range procedure different from the one set forth in FAR § 15.306(c), and that the agency thus acted improperly by deviating from its source selection plan.

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[2]In fact, Wilson raised several additional arguments which the agency addressed in detail in its report, but Wilson did not pursue in its comments. Included within these arguments were certain solicitation challenges raised by Wilson in an earlier protest, which the company was allowed to reinstate here for reasons that are no longer relevant to this dispute. Wilson's comments on the agency report expressly abandoned the solicitation issues, and responded to the agency only on the three issues discussed in this decision. Protester's Comments at 1. For those issues not expressly abandoned, but for which Wilson offers no rebuttal to the agency's arguments, we consider those issues abandoned as well. Purification Envtl., B-259280, Mar. 14, 1995, 95-1 CPD ¶ 142 at 2 n.2.

We disagree. As a preliminary matter, we do not accept Wilson's premise that GSA's internal source selection plan states a standard for establishing the competitive range different from the standard set forth at FAR § 15.306(c). Nevertheless, even if it did, requirements stated in source selection plans which are not disclosed to offerors do not give outside parties any rights. Mandex, Inc.; Tero Tek Int'l, Inc., B-241759 et al., Mar. 5, 1991, 91-1 CPD ¶ 244 at 7. Instead, the competitive range procedures published in the FAR set the standard for establishing such ranges. Wilson's argument that GSA acted improperly by following the guidelines in the FAR thus is wholly unpersuasive.

Wilson next argues that its exclusion from the competitive range was improperly based on an unreasonable evaluation of its proposal, as evidenced by two alleged discrepancies in the scores assigned by one evaluator. In the first instance, Wilson claims the evaluator unreasonably gave the company only 25 of 50 available points under the management plan evaluation factor, despite identifying seven strengths, no deficiencies, and five weaknesses. In the second instance, Wilson claims the same evaluator treated the company unequally in scoring its proposal under the corporate experience evaluation factor, when the score is compared with that given one of the offerors included in the competitive range. Specifically, Wilson states that the evaluator articulated a strength for both offerors that was "virtually identical," but awarded the other company 18 of 20 available points, while awarding Wilson only 15 points. Protester's Comments at 4-5.

The determination of whether a proposal is in the competitive range is principally a matter within the reasonable exercise of discretion of the procuring agency. In reviewing an agency's evaluation of proposals and subsequent competitive range determination we will not evaluate the proposals anew in order to make our own determination as their acceptability or relative merits; rather, we will examine the record to determine whether the documented evaluation was fair, reasonable, and consistent with the evaluation criteria. Ervin & Assocs., Inc., B-280993, Dec. 17, 1998, 98-2 CPD ¶ 151 at 3. As with any evaluation review, our chief concern is not the number of strengths or weaknesses, point scores, or specific ratings, but whether the evaluation communicates the principle strengths and weaknesses of the proposal and whether the record supports the evaluators' conclusions. Innovative Logistics Techniques, Inc., B-275786.2, Apr. 2, 1997, 97-1 CPD ¶ 144 at 9.

With respect to the first instance cited by Wilson, we have no basis on this record to conclude that the evaluator acted unreasonably in awarding Wilson only 25 of 50 available points after identifying seven strengths and five weaknesses. In addition, even though Wilson's counsel was provided all of the evaluation materials here (under the terms of a protective order issued by our Office) Wilson fails to make any specific argument in support of its claim that the rating is unreasonable. For example, Wilson raises no challenge to the nature of the weaknesses and strengths identified, does not address whether they are accurate assessments, and fails to address how the score should be changed given the evaluator's unchallenged

findings. In addition, Wilson makes no attempt to explain how the score of this one evaluator compares to the scores given by other evaluators; does not address the apparently minimal impact of changing this one score, given the fact that the score must be averaged (or otherwise reconciled) with the scores of [deleted] other evaluators to obtain a consensus score; and makes no assertion that this minimal change to one evaluator's assessment, under one evaluation factor, would meaningfully change the company's overall technical rating. Under these circumstances, we have no basis to conclude that the assessments made by this evaluator were unreasonable, or that they caused the overall evaluation to be unreasonable. See DTH Management JV, B-283239, Oct. 6, 1999, 99-2 CPD ¶ 68 at 4-5. We find similarly unpersuasive Wilson's undeveloped argument that it was unreasonably excluded from the competitive range because one evaluator of [deleted] gave the company a past performance score of 15, while giving another offeror a score of 18, based on a review of past performance records that Wilson considers similar.

Wilson's third challenge is closely related to its first argument--i.e., Wilson argues that the agency wrongly excluded its proposal from the competitive range under the standard for establishing a competitive range set forth in GSA's internal source selection plan, because the weaknesses identified in its proposal were mostly informational deficiencies that could have been resolved by holding discussions with the company. As before, we note that even though we disagree with Wilson's characterization of the agency's source selection plan, there is nothing improper about GSA's decision to follow the standards for establishing a competitive range set forth in FAR § 15.306(c). Under this regulation, an agency may properly establish a limited competitive range, eliminating proposals, like Wilson's, which it reasonably concludes have little probability of success. Matrix Gen., Inc., B-282192, June 10, 1999, 99-1 CPD ¶ 108 at 3. Further, an agency need not conduct discussions with an offeror whose proposal has been properly eliminated from the competitive range. Wirt Inflatable Specialists, Inc., B-282554 et al., July 28, 1999, 99-2 CPD ¶ 34 at 3.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel