



## Decision

**Matter of:** Gas Turbine Engines, Inc.

**File:** B-401868.2

**Date:** December 14, 2009

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Ginger Denos for the protester.

Debra J. Talley, Esq., and Christopher C. Schwan, Esq., U.S. Army Materiel Command, for the agency.

Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

In a negotiated procurement where award was to be made on the basis of low price, agency did not conduct meaningful discussions where the agency sent identical letters to protester and other competitive-range offerors that did not inform protester that the agency viewed its proposed price to be unreasonably high; nonetheless, protest is denied where the record does not establish a reasonable possibility that the protester was prejudiced by the lack of meaningful discussions.

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### DECISION

Gas Turbine Engines, Inc. (GTE) protests the award of a contract to Prototype Engineering & Mfg., Inc., under request for proposals (RFP) No. W58RGZ-08-R-0825, issued by the U.S. Army Materiel Command for maintenance and overhaul of Flutter Dampener Assemblies that are used on the UH-60 Helicopter. GTE complains that the Army conducted inadequate and misleading discussions.

We deny the protest.

The RFP provided for the award of a 5-year indefinite-delivery, indefinite quantity contract to the responsive and responsible offeror whose proposal was evaluated at the lowest total cost to the government; there were no technical evaluation factors identified in the solicitation. The Army received offers from 11 vendors, which ranged in price from \$8.25 million to \$55.8 million. Prototype Engineering's initial price proposal was \$9,396,020, and GTE's initial proposal price was \$31,750,800. The proposals of all 11 offerors were included in the competitive range, although the Army's "pre-negotiation" objective was \$8,245,643.25. See Agency Report (AR),

Tab 4, Price Negotiation Memorandum. The contracting officer conducted written discussions with the offerors, sending each offeror an identical letter that directed the firm to re-evaluate its proposed pricing to ensure that the proposed pricing adequately covered these solicitation requirements, and cautioning the firm that “[t]his is a firm fixed price solicitation and there are no provisions for increase.”<sup>1</sup> See AR, Tab 5, Army Discussions Letters, Apr. 9, 2009. Prototype Engineering reduced its proposed price to \$7,897,220; GTE did not revise its initial proposed price of \$31,750,000. Award was made to Prototype Engineering on the basis of that firm’s technically acceptable, low-priced offer. Following a debriefing, GTE protested to our Office.

GTE complains that the Army engaged in inadequate and misleading discussions by failing to inform GTE that the agency considered the firm’s proposed price to be unreasonably high.<sup>2</sup>

It is a fundamental precept of negotiated procurements that discussions, when conducted, must be meaningful; that is, discussions must identify deficiencies and significant weaknesses in each offeror’s proposal that could reasonably be addressed so as to materially enhance the offeror’s potential for receiving award. See Federal Acquisition Regulation (FAR) § 15.306(d)(3); PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8; Spherix, Inc., B-294572, B-294572.2, Dec. 1, 2004, 2005 CPD ¶ 3 at 13. Discussions are to be tailored to each offeror’s proposal. FAR § 15.306(d)(1). An agency fails to conduct meaningful discussions where it fails to apprise an offeror that its prices were viewed as unreasonably high. Price Waterhouse, B-220049, Jan. 16, 1986, 86-1 CPD ¶ 54 at 6-7. Further, an agency may not mislead an offeror—through the framing of a discussion question or a response to a question—into responding in a manner that does not address the agency’s concerns; misinform the offeror concerning a problem with its proposal; or misinform the offeror about the

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<sup>1</sup> The contracting officer describes the letter as one that “has been routinely sent to offerors on past procurements and was to verify each offeror’s price before award, to discourage underbidding and to reaffirm to offerors that any requests for additional funding or payment after award would not be considered.” Contracting Officer’s Statement at 1.

<sup>2</sup> GTE also challenged the award to Prototype Engineering, arguing that the contract could not be adequately and safely performed at the awardee’s proposed price. We dismissed this protest ground, because a protester’s claim that an offeror submitted an unreasonably low price—or even that the price is below the cost of performance—is not a valid basis for protest. Brewer-Taylor Assocs., B-277845, Oct. 30, 1997, 97-2 CPD ¶ 124 at 4. An agency decision that the contractor can perform a contract at the offered price is an affirmative determination of responsibility, which we will not review except under circumstances that were not raised by the protester.

government's requirements. Metro Mach. Corp., B-281872 et al., Apr. 22, 1999, 99-1 CPD ¶ 101 at 6.

Here, we find that the Army failed to conduct meaningful discussions with GTE. The record shows that the Army considered GTE's proposed price to be unreasonably high. In this regard, the contracting officer stated that GTE's proposed price was never competitive and, in fact, was "unreasonably high when compared to past procurements in 2000 and 2005 of the same services."<sup>3</sup> Contracting Officer's Statement at 2. The agency, however, included GTE's unreasonably high-priced proposal in the competitive range and conducted discussions with the firm, but never informed GTE that the agency viewed GTE's price to be noncompetitive and unreasonably high, despite the fact that the RFP provided for award to the firm with the low priced, technical acceptable proposal. Instead, as noted above, the Army sent an identical discussions letter to all the competitive range offerors, including GTE, and therefore the Army also failed to tailor its discussions to address areas of concern or weakness in each of the firm's proposals, as required by FAR § 15.306(d)(1).

The Army argues that, even if, as we have concluded, the agency failed to conduct meaningful discussions with GTE, the protester has not shown that it was prejudiced. We agree. Competitive prejudice is an essential element of any viable protest, and we will sustain a protest only if there is a reasonable possibility that the protester was prejudiced by the agency's action, McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; that is, if it is apparent from the record that, but for the agency's actions, the protester would have had a reasonable possibility of receiving award. See Cogent Sys., Inc., B-295990.4, B-295990.5, Oct. 6, 2005, 2005 CPD ¶ 179, at 10. Here, GTE's proposed price was substantially higher than the awardee's, and GTE does not contend that, in response to adequate discussions, it would have drastically reduced its price to be competitive for this award, which essentially called for award to the low-priced proposal. Rather, as noted above, GTE argues that the awardee could not adequately perform the contract at the awardee's proposed low price, an argument we dismissed. Accordingly, because the record does not show a reasonable possibility that GTE was prejudiced by the Army's failure to conduct meaningful discussions, the protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>3</sup> GTE's proposed price exceeded the Army's negotiation objective by more than \$23 million.