



Decision

Matter of: Tiger Enterprises, Inc.

File: B-403475.2

Date: February 15, 2011

Lillian K. Mauldin, for the protester.
Richard D. Lieberman, Esq., Garry S. Grossman, Esq., and Gabriel D. Soll, Esq.,
McCarthy, Sweeney & Harkaway, P.C., for the intervenor.
CPT Tudo Pham, Department of the Army, for the agency.
Eric M. Ransom, Esq., and Edward T. Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly excluded protester from the competitive range is denied where record shows that evaluation was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

Tiger Enterprises, Inc., protests its elimination from the competitive range under request for proposals (RFP) No. W91247-10-R-0017, a small business set-aside issued by the Department of the Army for the lease of washers and dryers.

We deny the protest.

The Army Mission & Installation Contracting Command issued the RFP on June 30, 2010, for the purpose of awarding a requirements contract for the lease of washers and dryers at Fort Bragg, Simmons Army Airfield, and Camp Mackall, North Carolina. The RFP contemplated a best value source selection considering past performance and price, with past performance being more important than price. The RFP stated that past performance would be rated on an adjectival scale of excellent, good, adequate, marginal, poor, and neutral. The RFP also advised that price would not be assigned an adjectival rating, but that "unreasonably high or unrealistically low proposed prices may be grounds for eliminating a proposal from the competitive range." RFP at 59.

The Army received a total of six proposals in response to the RFP, including the proposal submitted by Tiger. After an initial evaluation, the Army determined that discussions were necessary and established a competitive range consisting of the two most highly rated proposals. Tiger's proposal, rated excellent under the past performance factor with a price of \$6,330,576, was not among the two most highly rated proposals as determined by the agency. Tiger received a letter from the contracting officer on November 3, which stated that Tiger's proposal was not selected for the competitive range, and that the determination was "based primarily on [Tiger's] Price." Competitive Range Letter, at 1. This protest followed.

Tiger asserts that because it received the highest possible rating under the past performance factor, the only permissible basis in the RFP for excluding its proposal from the competitive range would be a determination that its price was unreasonably high or unrealistically low. Tiger argues that, because the November 3 competitive range letter did not indicate that Tiger's price was unreasonably high or unrealistically low, the Army did not make such a determination, and therefore had no basis to exclude Tiger from the competition.¹

The determination of whether a proposal is in the competitive range is principally a matter within the judgment of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. We will review that judgment—and the evaluation judgments on which it was based—only to ensure that it was reasonable and in accord with the solicitation and applicable statutes and regulations. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4. Here, the agency's determination was reasonable and in accordance with the RFP.

The record confirms that the Army excluded Tiger from the competitive range based on its conclusion that Tiger's price was unreasonable. In this regard, the Army's basis for excluding Tiger from the competitive range is documented in the agency's competitive range determination, dated October 26, and included in the record as Agency Report (AR) Tab 8. The determination shows that, of the four offerors excluded from the competitive range, two were excluded on the basis of their past performance rating and unreasonably high price, and two, including Tiger, were

¹ Tiger also alleges that the awardee is not a small business, and is therefore not eligible to receive the award. The Small Business Act, 15 U.S.C. § 637(b)(6), gives the Small Business Administration (SBA), not our Office, the conclusive authority to determine matters of small business size status for federal procurements. Bid Protest Regulations, 4 C.F.R. § 21.5(b)(1) (2010); Randolph Eng'g Sunglasses, B-280270, Aug. 10, 1998, 98-2 CPD ¶ 39 at 3. We therefore will not review a protester's challenge to another company's size status, nor will we review a decision by the SBA that a company is, or is not, a small business for purposes of federal procurements. Randolph Eng'g Sunglasses, supra.

excluded on the basis of unreasonably high price alone. With regard to Tiger specifically, the competitive range determination stated:

[Tiger's] proposal is excluded from the competitive range because their price was unreasonably high when compared to other offerors with the same past performance rating of Excellent. There were no deficiencies or weaknesses noted. Also when compared to other offerors price with the same rating, [Tiger's] price was 100.8% higher.

AR, Tab 8, Competitive Range Determination, at 2.

As noted, the RFP stated that "unreasonably high or unrealistically low proposed prices may be grounds for eliminating a proposal from the competitive range." RFP at 59. Where, as here, the protester's price was more than twice as much as the price offered by an equally-rated, lower cost offeror, there is no basis to question the Army's determination that Tiger's price was unreasonably high, or its decision to exclude Tiger from the competitive range.

The protest is denied.

Lynn H. Gibson
General Counsel