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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Sunshine Kids Service Supply Company

File: B-292141

Date: June 2, 2003

Justin Sulzner for the protester.

Janet N. Repka, Esq., Washington Headquarters Services, Department of Defense, and Kevin R. Harber, Esq., Small Business Administration, for the agencies.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where agency rejected proposal submitted by sole HUBZone offeror in HUBZone set-aside based on finding of unreasonable price, and subsequently determined that proposal also was technically unacceptable, agency decision to cancel solicitation was unobjectionable, even if original basis for rejection--unreasonable price--was not supported by the record.

DECISION

Sunshine Kids Service Supply Company (SKSS) protests the agency's decision to cancel request for proposals (RFP) No. MDA946-03-R-0014, a HUBZone (historically underutilized business zone) small business set-aside issued by the Department of Defense for custodial services. SKSS asserts that the cancellation was improper, and that the agency instead should have made award to SKSS.

We deny the protest.

The RFP sought proposals to provide all services, supplies, equipment, and supervision necessary to perform interior and exterior custodial work in the Hybla Valley Federal Building in Alexandria, Virginia. The RFP contemplated award of a fixed-price contract for a 6-month base period, with 4 option years, to the offeror whose proposal was considered the "best value." Proposals were to be evaluated under three factors--performance, management approach, and price--with the two technical factors of equal importance and, combined, of significantly more importance than price. Price was to be evaluated for reasonableness and realism, as a reflection of offerors' understanding of the RFP's requirements. The RFP advised

that the agency intended to make award without conducting discussions, and warned that initial proposals therefore should contain the offeror's best terms from a price and technical standpoint.

Three offerors, including SKSS, submitted proposals. The agency rejected two of the proposals because the offerors were not HUBZone small businesses, and rejected SKSS's proposal after determining that its price was unreasonably high. Because no acceptable HUBZone proposals remained, the agency canceled the RFP, planning to reissue it as a total small business set-aside. Upon learning of its proposal's rejection and the agency's intent to cancel the RFP, SKSS filed an agency-level protest. In the course of preparing its response to that protest, the agency evaluated SKSS's technical proposal, and concluded that it was technically unacceptable. Before the agency issued a formal response to the protest, SKSS filed this protest with our Office challenging the agency's conclusion that its proposed price was unreasonably high.

In a negotiated acquisition, agencies have broad discretion in deciding whether to cancel a solicitation; they need only advance a reasonable basis for the cancellation. Encore Mgmt., Inc., B-278903.2, Feb. 12, 1999, 99-1 CPD ¶ 33 at 3. Cancellation of a HUBZone set-aside solicitation is reasonable where no acceptable offers are received from HUBZone small business concerns, since the set-aside must be withdrawn under those circumstances and the requirement set aside for small business concerns. Federal Acquisition Regulation (FAR) § 19.1305(d); see Fluid Power Int'l, Inc., B-278479, Dec. 10, 1997, 97-2 CPD ¶ 162 at 2-3 (cancellation of a small business set-aside solicitation was reasonable where no acceptable small business quotations were received).

As noted, the agency initially canceled the RFP after concluding that SKSS's price was unreasonable, and that there thus were no acceptable HUBZone offers. The contracting officer's conclusion was based in significant part on a comparison of SKSS's price with the agency's estimate--SKSS's price exceeded the estimate by 8.2 percent. The protester asserts that such a small percentage does not support a finding of price unreasonableness. We are inclined to agree with the protester, since the agency has not provided an explanation as to why this arguably modest price difference was significant enough to render SKSS's price unreasonable.¹ However, the validity of the price reasonableness determination is not dispositive in this case, and we thus need not address it, since the record supports the agency's conclusion--reached during its consideration of the agency-level protest--that SKSS's proposal was technically unacceptable. In this regard, a contracting agency's initial reliance on an improper reason for canceling a solicitation is not significant if the record

¹ In response to our request for its views on the protest, the Small Business Administration (SBA) takes the position that the less than 9 percent difference between SKSS's and the compared prices does not support the conclusion that SKSS's price was unreasonably high. SBA Report at 4.

establishes that another proper basis for the cancellation exists. Peterson-Nunez Joint Venture, B-258788, Feb. 13, 1995, 95-1 CPD ¶ 73 at 5; SEI Info. Tech.–Recon. B-219668.2, Apr. 23, 1986, 86-1 CPD ¶ 393 at 3. An agency properly may cancel a solicitation no matter when the information supporting the cancellation first surfaces or should have been known. Pike Creek Computer Co., Inc., B-290329, June 21, 2002, 2002 CPD ¶ 106 at 2.

The RFP included a 14-page work statement and laid out detailed requirements for information to be evaluated under the technical evaluation factors. RFP §§ C, L.6. Based on the RFP's requirements, the evaluators identified numerous weaknesses in SKSS's proposal. For example, under the past performance factor, offerors were to submit contract summaries of relevant contracts, explaining their similarity in complexity and scope to the RFP's work statement, as well as including descriptions of experience, such as cleaning exterior parking lot areas and using environmentally preferable products. RFP § L.6.1.b. The evaluators found that SKSS's proposal did not provide sufficient information to demonstrate the relevance of SKSS's listed contracts. Agency Report, Tab 12. In fact, while SKSS's proposal listed five contracts as references, it did not include any summaries showing contract comparability, or any descriptions of experience in cleaning parking lots or using environmentally preferable products.

Similarly, with regard to the management approach factor, proposals were to include descriptions of offerors' approaches to quality control, staffing, work accomplishment, and environmental stewardship. RFP § L.6.2. Notwithstanding the requirement for detailed information, SKSS's proposal included only a brief, 3-page response summarily addressing the requirements. For example, under the program management section, which was to include an organization chart, resumes, and plans for training, safeguarding of government property, and environmental compliance, SKSS's proposal only provided the following:

The specifications of this contract are not unlike any others that [SKSS is] currently staffing now, most are required to fill out FD-258 Forms and those fingerprints are then sent to the DOJ in Washington D.C. for clearance. Quality help is readily available in such an economic environment.

SKSS Proposal at 3. The evaluators found that the proposal failed to describe SKSS's approach to providing quality control, improvement process, and various required plans, and concluded that the information SKSS provided was inadequate to demonstrate a management approach that would meet the contract's requirements.

In reviewing an agency's evaluation, we will not reevaluate a proposal but, instead, will examine the evaluation to ensure that it was reasonable and consistent with the solicitation and applicable statutes and regulations. Kay & Assocs., Inc., B-291269, Dec. 11, 2002, 2003 CPD ¶ 12 at 4.

SKSS has not shown either that the RFP did not require the information the agency asserts was required, or that its proposal in fact included the information the agency found was missing. Rather, SKSS's challenge to the determination that its proposal was unacceptable is limited to general assertions that "other facilities find [its] work acceptable" and that it "somehow manage[s] to do business in three other states." Comments at 1. However, these assertions constitute mere disagreement with the agency's judgments, and therefore are insufficient to establish that the evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7. We conclude that the agency reasonably found that SKSS's proposal did not include the information clearly required by the RFP, and therefore reasonably concluded that SKSS's proposal was technically unacceptable.

Since SKSS was the only HUBZone business that responded to the RFP, and the agency properly found its proposal technically unacceptable, there is no basis to object to the agency's decision to cancel the RFP and reissue it as a small business set-aside.

The protest is denied.

Anthony H. Gamboa
General Counsel