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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Gold Cross Safety Corporation

**File:** B-296099

**Date:** June 13, 2005

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Daniel Lanktree for the protester.

J.R. Cohn, Esq., and Julius Rothlein, Esq., U.S. Marine Corps, for the agency.

Peter Verchinski, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency's failure to evaluate protester's technical submission before eliminating its quotation from competition was unobjectionable where agency reasonably determined that protester's quoted price--which was 20 times the awardee's--was not fair and reasonable, and eliminated quotation from competition on that basis.

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### DECISION

Gold Cross Safety Corporation protests the U.S. Marine Corps's issuance of a purchase order to Driven2Dare, Inc. under request for quotations (RFQ) No. M6700105Q0032, for a vehicle safety promotion campaign. Gold Cross principally alleges that the agency improperly rejected the firm's quotation based on price alone, without evaluating its technical submission.

We deny the protest.

On February 2, 2005, the Corps issued, as a small business set-aside, a combined synopsis/solicitation for a multimedia-based vehicle safety promotion campaign at Camp Lejeune, North Carolina. The promotion campaign, which was being procured as a commercial item, required 30 days of presentations over the next year, and also required the contractor to produce a safe-driving DVD for reproduction and later distribution as a training resource. Award was to be made on a "best value" basis, with three evaluation factors: technical capability, past performance, and price. Technical capability and past performance, when combined, were significantly more important than price.

Gold Cross, the awardee, and a third vendor submitted quotations by the March 3 due date, quoting prices, respectively, of \$2,950,000, \$150,000, and \$363,500. The independent government estimate was \$290,000. Due to its high price, the agency rejected Gold Cross's quotation without evaluating the firm's technical submission.<sup>1</sup> The agency then evaluated the remaining two vendors' technical submissions, and determined that Driven2Dare's represented the best value; it thus made award to that firm on March 4.

Gold Cross challenges the award on several bases. First, it alleges that the agency improperly procured the promotion campaign as a commercial item; the protester asserts that such a campaign is not a commercial item.<sup>2</sup>

We dismiss this protest ground as untimely. Our Bid Protest Regulations contain strict rules for the timely submission of protests. They specifically require that a protest based upon alleged improprieties apparent on the face of the solicitation be filed prior to the closing time for receipt of initial proposals (or quotations). 4 C.F.R. § 21.2(a)(1) (2005). Here, the designation of the items being procured as commercial items was apparent from the solicitation itself. Gold Cross therefore was required to protest on this basis before the initial closing time. Because it did not do so, this aspect of its protest is untimely and will not be considered.

Gold Cross next asserts that the agency improperly eliminated its quotation from the competition based on price alone, without considering the high quality of its technical submission. This argument is without merit. While the RFQ provided for a best value evaluation based on comparative technical and price considerations, the agency also was required to consider whether the protester's quoted price was too high in an absolute sense. In this regard, before awarding a fixed-price contract, an agency is required to determine that the price offered is fair and reasonable. Federal Acquisition Regulation (FAR) § 15.402(a). Here, the agency states that it rejected Gold Cross's quotation pursuant to the contracting officer's determination that the

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<sup>1</sup> While the agency's letter advised Gold Cross that its quotation was eliminated from the "competitive range," it appears that this language was merely intended to put the protester on notice that its quotation had been eliminated from the competition. In this regard, the RFQ provided that the agency intended to make award without discussions, and the record does not indicate that the agency ever established a competitive range or conducted discussions.

<sup>2</sup> Gold Cross also initially alleged that the agency improperly framed the statement of work based on the awardee's previous contract for similar work. The agency responded to this allegation in its agency report, and Gold Cross does not challenge the agency's explanation in its comments on the report. Consequently, we consider this protest ground to be abandoned. See Delco Indus. Textile Corp., B-292324, Aug. 8, 2003, 2003 CPD ¶ 141 at 3 n.2.

quoted price was so high that award to the firm would not be in the public interest, no matter the quality of its technical submission. Contracting Officer's Statement of Facts at 2. This was tantamount to finding that Gold Cross's price was unreasonably high. A price reasonableness determination may be based on various price analysis techniques, including comparison of prices received among themselves and to an independent government estimate (IGE). FAR § 15.404-1(b)(2). A price reasonableness determination is a matter of administrative discretion that we will question only where it is clearly unreasonable or there is a showing of bad faith or fraud. The Right One Co., B-290751.8, Dec. 9, 2002, 2002 CPD ¶ 214 at 5.

The contracting officer considered the prices received and the IGE, and concluded that Gold Cross's price was so high--approximately 20 times the awardee's price, 8 times the third vendor's price, and 10 times the IGE--that award could not be made to the firm. Given this great disparity in pricing, there was nothing improper in the contracting officer's determining that Gold Cross's price was unreasonable and eliminating it from the competition on this basis. See, e.g., Rhimco Indus., Inc., B-247600, June 8, 1992, 92-1 CPD ¶ 499 at 2 (a price 42 percent higher than government estimate constitutes an unreasonable price). Since Gold Cross could not receive the award due to its unreasonable price, the results of any technical evaluation the agency may have subsequently performed were immaterial; even if Gold Cross's technical submission received the highest possible rating, it could not receive the award due to its unreasonable price. Consequently, there was nothing improper in the agency's failure to evaluate Gold Cross's technical submission.<sup>3</sup>

Gold Cross raises various additional grounds in its protest that challenge the propriety of the award to Driven2Dare--including allegations that the awardee does not have the experience or capability to perform the contract. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (2000), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a). A protester is not an interested party where it would not be in line for contract award if its protest were sustained. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57. Here, since the protester's quotation was properly rejected, and the third vendor--whose eligibility for award

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<sup>3</sup> The protester points to various FAR provisions that it claims required the agency to evaluate its technical submission. Under these circumstances, we do not think the referenced FAR sections--governing source selection procedures--are applicable once an agency has reasonably determined that a quoted price is not fair and reasonable. As explained above, once the agency determined that the protester's price was unreasonable, the agency could not contract with Gold Cross, and any subsequent evaluation of Gold Cross's technical submission would have no bearing on the procurement.

Gold Cross does not question--would be in line for award if Gold Cross's award challenge were sustained, Gold Cross is not an interested party for purposes of challenging the award to Driven2Dare.

The protest is denied.

Anthony H. Gamboa  
General Counsel