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Decision

Matter of: KIRA Training Services, LLC, dba KIRA Facilities Services

File: B-419149.2; B-419149.3

Date: January 4, 2021

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Laura Whitten, Esq., and John Aguon, Esq., Department of the Navy, for the agency. Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of proposals under multiple evaluation factors is denied where the evaluation was reasonable and consistent with the solicitation's evaluation criteria.
 2. Protest alleging that awardee's pricing is unbalanced is dismissed where the protester initially fails to make the threshold showing that one or more of the awardee's prices was overstated and the protester's later attempt to file a supplemental basis for this ground of protest is untimely.
 3. Protest challenging agency's selection of a lower-rated, lower-priced proposal for award is unobjectionable where the agency's tradeoff decision was reasonable and consistent with the solicitation's evaluation criteria, and where the agency adequately documented its tradeoff rationale.
 4. Protest alleging that the agency failed to comply with the pre-award notification requirements of Federal Acquisition Regulation 15.503(a)(2) is denied where no timely post-award size protest was filed and the awardee has not been determined by the Small Business Administration to be other than small.
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DECISION

KIRA Training Services LLC, a small business of Colorado Springs, Colorado, protests the award of a contract to Invicta Defense LLC, a small business of Fort Worth, Texas, under request for proposals (RFP) No. N40192-20-R-7040, issued by the Department of

the Navy, Naval Facilities Engineering Command, for transportation management and logistics support services at Anderson Air Force Base in Guam.¹ KIRA challenges various aspects of the agency's source selection process, including the agency's evaluation under the technical and price factors.

We deny the protest.

BACKGROUND

The Navy issued the RFP as a small business set-aside on February 20, 2020, seeking proposals to provide transportation management and logistics support services to the 36th Logistics Readiness Squadron at Anderson Air Force Base in Guam. Agency Report (AR), Tab 3, RFP at 1-2. The RFP contemplated award of an indefinite-delivery, indefinite-quantity (IDIQ) contract for a 3-month mobilization period, a 9-month base period, a 1-year option period, a 2-month demobilization period, and a 6-month extension of services option period.² *Id.* at 2-3, 11. The mobilization and demobilization performance periods contained only fixed-price contract line items. *Id.* at 3. The base period and option periods contained both a fixed-price contract line item, referred to by the agency as "recurring work," and a fixed-price IDIQ contract line item, referred to by the agency as "non-recurring work." *Id.* at 3-7.

The RFP provided for award on a best-value tradeoff basis, considering the following non-price evaluation factors: (1) management approach; (2) technical approach; (3) experience; (4) safety; and (5) past performance. *Id.* at 75. The RFP specified that the "technical" factors--management approach, technical approach, experience, and safety--were of equal importance to each other and, when combined, were of equal importance to past performance. *Id.* The non-price evaluation factors, when combined, were of "approximately" equal importance to price. *Id.*

Proposals would be evaluated and assigned an adjectival rating under each non-price factor, and would also be assigned an adjectival rating for the technical proposal overall. *Id.* at 80. These ratings would be either outstanding, good, acceptable, marginal, or

¹ Invicta is a mentor-protégé joint venture under the Small Business Administration's 8(a) mentor-protégé program, consisting of King & George LLC, which is the protégé and managing member, and J&J Maintenance Inc., which is the mentor. Intervenor's Comments at 14.

² The RFP also noted that the agency has the option to extend the term of the contract in accordance with Federal Acquisition Regulation (FAR) 52.217-8, Option to Extend Services (NOV 1999) and FAR 52.217-9, Option to Extend the Term of the Contract (MAR 2002). *Id.* at 11.

unacceptable.³ *Id.* at 80-81. The past performance factor would be assigned a confidence rating of either satisfactory, neutral, limited, or no confidence. *Id.* at 81.

As relevant to this protest, the RFP provided that the agency's evaluation under the safety factor would consider two types of safety data: the experience modification rate (EMR); and the Occupational Safety and Health Administration days away from work, restricted duty, or job transfer (DART) rate.⁴ *Id.* at 79. When evaluating the EMR and DART rates, the agency was to determine whether an offeror had "demonstrated a history of safe work practices, taking into account any upward or downward trends and extenuating circumstances that impact the rates." *Id.* The RFP provided that lower EMR and DART rates would be given greater weight in the evaluation. *Id.*

The RFP also provided that the agency would evaluate the offeror's technical approach to safety, including "data from other sources." *Id.* In evaluating the technical approach to safety, the agency was to assess the degree to which subcontractor safety performance would be considered by the offeror and the degree to which innovations are being proposed that may enhance safety during performance. *Id.* The RFP specified that offerors who demonstrated "a commitment to hire subcontractors with a culture of safety and who propose innovative" safety methods "may be given greater weight in the evaluation." *Id.*

On or before the April 15, 2020 closing date, the agency received timely proposals from five offerors, including KIRA and Invicta. Contracting Officer's Statement & Memorandum of Law (COS/MOL) at 2. On June 24, following the evaluation of initial proposals, the agency entered into discussions with all five offerors. *Id.* at 4. On June 30, the agency issued amendment 7 to the RFP, which revised the RFP's pricing schedule and extended the common due date for receipt of revised proposals to July 7, 2020. AR, Tab 8, Amendment 7 at 1-2; COS/MOL at 3. Both KIRA and Invicta submitted timely revised proposals. COS/MOL at 5.

³ As relevant here, an outstanding rating was defined as "[p]roposal indicates an exceptional approach and understanding of the requirements and contains multiple strengths, and risk of unsuccessful performance is low." *Id.*

⁴ The RFP also required offerors to submit a third type of safety data, the total recordable case (TRC) rate, but did not mandate that the agency would evaluate this rate. *Id.* at 78-79.

The agency's source selection evaluation board (SSEB) evaluated KIRA and Invicta's final proposals as follows:

	KIRA	Invicta
Overall Technical Rating	Outstanding	Outstanding
Management Approach	Good	Good
Technical Approach	Outstanding	Outstanding
Experience	Outstanding	Outstanding
Safety	Outstanding	Outstanding
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Price	\$27,664,538	\$22,300,325

AR, Tab 15, Source Selection Evaluation Board (SSEB) Final Report at 26-27.

As relevant here, the SSEB assessed three strengths to Invicta's proposal under the safety factor for having a rigorous safety requirement for subcontractors; for having a safety program called "[DELETED]," which the agency described as "innovative"; and for one of Invicta's joint-venture member's having achieved safety awards. AR, Tab 15, SSEB Final Report at 16. Further, the record demonstrates that the agency considered both types of required safety data--EMR and DART--as well as the TRC rates offerors were required to submit. See *id.* at 13. The agency had found in its initial evaluation that Invicta's joint-venture members, King & George and J&J, had EMR rates that the agency evaluated as presenting moderate and high risk. AR, Tab 6, Pre-Negotiation Memorandum at 32. The agency also found that all of Invicta's DART and TRC rates were evaluated as having either low or very low risk. *Id.*

After discussions and the submission of revised proposals, the SSEB found that Invicta's proposal narrative under the safety factor had addressed the agency's concerns regarding recent safety-data rate spikes. AR, Tab 15, SSEB Final Report at 13, 16. Specifically, the agency found that Invicta had sufficiently explained that Invicta member King & George's high EMR rates in 2018 and 2019 were due to a single incident with a large unexpected loss. The agency also noted that Invicta asserted its commitment to safety through its increase in safety resources at the corporate level and aggressive approach to promoting the safety culture. *Id.*

Based on the SSEB's evaluation, as well as the Source Selection Authority's (SSA's) own analysis, the SSA concluded that Invicta's proposal was the most advantageous and presented the best value under the terms of the RFP. AR, Tab 16, Source Selection Decision Document (SSDD) at 1-2. In comparing Invicta's and KIRA's proposals, the SSA noted that both offered an exceptional approach and low risk of unsuccessful performance, but noted that Invicta's evaluated price was \$5.3 million lower than KIRA's. *Id.* The agency evaluated KIRA as having the "slightly better" technical proposal in the non-price factors, see AR, Tab 22, Business Clearance Memorandum at 37; however, the SSA did not identify any specific discriminators. See AR, Tab 16, SSDD. Based on these considerations, especially Invicta's lower price, the

SSA concluded that Invicta's proposal represented the best value to the government. *Id.* at 2.

On September 5, the agency notified KIRA of the award to Invicta. Protest, Exh. A, Notice of Award at 1. The agency subsequently provided the protester with a debriefing, and this protest followed.

DISCUSSION

KIRA challenges various aspects of the agency's selection decision, including the evaluation of proposals under the technical and price factors, and maintains that the best-value decision was unreasonable.⁵ We have reviewed all of KIRA's arguments and find no basis on which to sustain the protest. We discuss several representative examples below.

Evaluation of Safety Factor

KIRA challenges the agency's evaluation of Invicta's proposal under the safety factor, arguing that the agency unreasonably relied on narrative explanations surrounding Invicta's safety data. Comments & Supp. Protest at 13-14; Supp. Comments at 9-11. In this regard, the protester contends that it was unreasonable for the agency to assign Invicta an outstanding rating under the safety factor when Invicta's "black-and-white objective data" was evaluated as moderate to high risk⁶ and the narrative that was added to Invicta's proposal following discussions "explain[ed] why Invicta's safety numbers are relatively poor, but d[id] not change them".⁷ *Id.*

⁵ KIRA also challenged the agency's technical evaluation based on the incorrect assumption that Invicta was not a joint venture and had no relevant experience. Protest at 9-10. KIRA also contended that the awardee's proposal failed to identify proposed key personnel as required by the RFP. Comments & Supp. Protest at 9. The protester later withdrew these allegations. *Id.* at 8; Supp. Comments at 1 n.1.

⁶ For example, KIRA points out that its previous three EMR rates (0.67 for 2017, 0.70 for 2018, and 0.69 for 2019) are lower, and therefore superior to, Invicta member King & George's rates over the same period (0.98 for 2017, 1.12 for 2018, and 1.06 for 2019). Supp. Comments at 10. The protester does not cite to the EMR rates for Invicta's other member, J&J (0.77 in 2017, 0.82 in 2018, and 0.78 in 2019), which are similar to KIRA's rates. See AR, Tab 14, Invicta Technical Proposal at 50.

⁷ In some instances, such as here, KIRA challenges the reasonableness of the agency's evaluation of revised proposals in light of the evaluation of initial proposals. However, the record shows that the agency resolved the assessed weakness to Invicta's safety proposal through discussions. See AR, Tab 15, SSEB Final Report at 13. Where concerns raised during an initial evaluation have been resolved by the final evaluation, the initial evaluation is immaterial. See *PAI Corp.*, B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 4, n.3 (*citing American Indian Sci. and Eng'g Soc'y*, B-232217, Dec. 12, 1988).

The agency responds that its evaluation was reasonable and in accordance with the terms of the solicitation. The agency contends that KIRA's arguments only focus on the raw safety data while ignoring the other factors to be considered under the terms of the solicitation, including the proposal's technical narrative and other sources of information available to the agency. Supp. MOL at 15; RFP at 79. Specifically, the agency notes that the solicitation required that offerors explain any extenuating circumstances that affected the offeror's safety data. Supp. MOL at 14-15; RFP at 79.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. Evaluation ratings and the number of strengths and weaknesses assessed are merely a guide to, and not a substitute for, intelligent decision making in the procurement process. *Affolter Contracting Co., Inc.*, B-410878, B-410878.2, Mar. 4, 2015, 2015 CPD ¶ 101 at 11 n.10. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

As noted above, the RFP provided that all EMR and DART rates would be evaluated while "taking into account any upward or downward trends and extenuating circumstances that impact the rating." RFP at 79. Further, the RFP provided with regard to the evaluation of the proposed technical approach to safety that for offerors "whose plan demonstrates a commitment to hire subcontractors with a culture of safety" and who propose "innovative methods to enhance a safe working environment," those approaches could be given greater weight in the evaluation. *Id.*

Here, the SSEB assessed three strengths to Invicta's proposal under the safety factor for having a rigorous safety requirement for subcontractors; for having a safety program called "[DELETED],"⁸ which the agency described as "innovative"; and for one of

The relevant inquiry here is whether the previous concerns were resolved and the agency's final evaluation was reasonable.

⁸ For the first time in its supplemental comments, on November 20, the protester contends that Invitca's proposal did not contain sufficient information regarding its "[DELETED]" program to warrant a strength. Supp. Comments at 12. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) require protests to be filed no later than within 10 days of when a protester knows, or should have known, of a basis for protest. Further, our regulations do not contemplate the piecemeal presentation of protest arguments. See *Vigor Shipyards, Inc.*, B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5. The protester's basis for this argument can be found in Invicta's proposal and the evaluation documents, which were all produced on October 28 as part of the original agency report

Invicta's member's achieving safety awards. AR, Tab 15, SSEB Final Report at 16. Further, the record demonstrates that the agency considered all three types of safety data that offerors were required to submit, *i.e.*, EMR, DART, and TRC rates. See *id.* at 13. The agency found that Invicta's proposal addressed and explained King & George's high EMR rates and concluded the rates showed a downward trend. Also, the record contradicts the protester's general characterization that Invicta's safety numbers are "relatively poor." Based on the source selection plan's guidelines for evaluating the DART and TRC rates, all of Invicta's DART and TRC rates, like KIRA's, were properly evaluated as very low to low risk. *Id.* at 13, 20.

On this record, we find no basis to question the agency's evaluation of Invicta's proposal under the safety factor. As noted above, the record established that the agency identified benefits flowing to the agency in the assessed strengths, and the solicitation provided for the agency to conduct an evaluation under which the assessment of these benefits was appropriate. While KIRA may disagree with the agency's judgments, including the agency's assignment of an outstanding rating to Invicta's proposal under the safety factor,⁹ it has failed to establish that those judgments were unreasonable. Accordingly, this protest ground is denied.

Unbalanced Pricing

KIRA also alleges that it was prejudiced by the agency's failure to evaluate Invicta's proposed prices for an "obvious lack of balance" as required by FAR 15.404-1(g)(2). Protest at 8. In its initial protest, KIRA's only basis for alleging that Invicta's proposed price was unbalanced was that Invicta's monthly pricing for the 6-month extension of services option "was 10% lower than its average monthly price for the last option of recurring services," *i.e.*, that one line-item price proposed by Invicta was understated. *Id.*

To prevail on an allegation of unbalanced pricing, a protester must show that one or more prices in the allegedly unbalanced proposal are overstated; it is insufficient for a protester to show simply that some line item prices in the proposal are understated. *Delta Risk, LLC*, B-416420, Aug. 24, 2018, 2018 CPD ¶ 305 at 18; *DynCorp Int'l LLC*; *AAR Supply Chain, Inc.*, B-415873 *et al.*, Apr. 12, 2018, 2018 CPD ¶ 157 at 6 n.7. Although both understated and overstated prices are relevant to the question of whether unbalanced pricing exists, the primary risk to be assessed in an unbalanced pricing

in this protest, more than 10 days before KIRA filed its supplemental comments. We therefore dismiss this contention as untimely.

⁹ As noted above, the solicitation defined an outstanding rating as "[p]roposal indicates an exceptional approach and understanding of the requirements and contains multiple strengths, and risk of unsuccessful performance is low." RFP at 81. KIRA has not demonstrated, despite its focus on the fact that its own raw safety data is superior to Invicta's, why the agency was unreasonable in assessing Invicta a rating of outstanding under the safety factor.

context is the risk posed by an overstatement of prices, because low prices (even below-cost prices) are not improper and do not themselves establish, or create the risk inherent in, unbalanced pricing. *American Access, Inc.*, B-414137, B-414137.2, Feb. 28, 2017, 2017 CPD ¶ 78 at 5; *Crown Point Sys.*, B-413940, B-413940.2, Jan. 11, 2017, 2017 CPD ¶ 19 at 5. Here, KIRA fails to make the threshold showing required to prevail on this allegation in its initial protest, namely that one or more of Invicta's prices was overstated. Accordingly, we dismiss this ground as raised in its initial protest for failure to state a valid basis of protest. 4 C.F.R. §§ 21.1(c)(4), (f); 21.5(f); *DynCorp Int'l LLC; AAR Supply Chain, Inc.*, *supra*.

In its November 9 comments on the agency report, the protester argues for the first time that Invicta's pricing was unbalanced because Invicta's individual pricing for line items 0003, 0005, 0006, and 0008 is higher than the pricing proposed by KIRA.¹⁰ Comments & Supp. Protest at 23-24.

Where a protester timely files a broad initial allegation and later supplements that broad allegation with allegations that amount to specific examples of the initial, general, challenge, and these examples involve different factual circumstances that require a separate explanation or defense from the agency, these specific examples must independently satisfy our timeliness requirements. This is because our regulations do not contemplate the piecemeal presentation of protest arguments. *Savannah River Tech. & Remediation, LLC; Fluor Westinghouse Liquid Waste Servs., LLC*, B-415637 *et al.*, Feb. 8, 2018, 2018 CPD ¶ 70 at 6 (*citing Vigor Shipyards, Inc.*, B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5).

Here, KIRA's supplemental protest ground challenging Invicta's pricing as unbalanced is based on the line-item pricing proposed by Invicta and KIRA. Comments & Supp. Protest at 23-24. The record shows that KIRA first had access to Invicta's line item pricing on September 5, when the agency included it in the notice of award provided to the protester. Protest, Exh. A at 2; *see also* Protest at 3. KIRA already had actual knowledge of its own line item pricing when it submitted its final proposal. However, the protester did not advance any arguments alleging that any of Invicta's prices were overstated until it filed its comments and supplemental protest responding to the agency report on November 9, more than 10 days after the information forming the basis for this argument was known to KIRA. We therefore dismiss this aspect of KIRA's protest as untimely.

¹⁰ The protester does not explain why the mere fact that these prices are higher than those proposed by KIRA would mean that they were overstated or would make the awardee's pricing unbalanced.

Best-Value Tradeoff Decision

KIRA next argues that the agency's selection of Invicta, a lower-rated, lower-priced offeror, was unreasonable because the SSA did not perform a qualitative comparison of the two offerors' proposals. Comments & Supp. Protest at 1-2; Protester's Supp. Comments at 2-3. As discussed below, we find no merit to this argument.

When making tradeoff decisions in a best-value source selection, selection officials have considerable discretion. *Omega Apparel, Inc.*, B-411266, June 26, 2015, 2015 CPD ¶ 205 at 6. The propriety of the price/technical tradeoff decision does not turn on the difference in the technical scores or ratings *per se*, but on whether the selection official's judgment concerning the significance of the difference was rational and consistent in light of the RFP's evaluation scheme. *Id.* The documentation supporting the decision must be sufficient to establish that the SSA was aware of the relative merits and costs of the competing proposals. *General Dynamics--Ordnance & Tactical Sys.*, B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

Contrary to the protester's assertions, here, the contemporaneous record reasonably documented the SSA's rationale for selecting Invicta's proposal as the best value to the government. AR, Tab 16, SSDD at 1-2. The SSA's selection decision reviewed and concurred with the SSEB's findings, which included each assessed strength and weakness. *Id.* at 1. The agency's rationale was further documented and explained in the contemporaneous business clearance memorandum. See AR, Tab 22, Business Clearance Memorandum at 33-37. The record shows that the SSEB specifically recognized the strengths provided by the offerors' proposals and that the agency considered KIRA to have the more advantageous technical proposal.¹¹ *Id.* at 37; see AR, Tab 15, SSEB Final Report at 14, 19. The SSEB and SSA, however, ultimately concluded that price was the key discriminator here, noting that KIRA's proposal represented a more than \$5 million (or 24 percent) price premium over Invicta's lower-priced proposal. AR, Tab 16, SSDD at 1-2; AR, Tab 15, SSEB Final Report at 32. The agency decided that KIRA's slightly better technical proposal was not sufficient to justify paying the associated price premium. AR, Tab 22, Business Clearance Memorandum at 37.

KIRA's complaint that the SSA unreasonably failed to consider any of KIRA's technical advantages to be sufficient to justify paying a 24% price premium provides no basis to

¹¹ The protester does argue that some aspects of its proposal should have been discriminators when compared to Invicta's proposal. See, e.g., Protester's Supp. Comments at 6 (arguing that KIRA's allegedly more relevant experience and past performance contracts should be discriminators when compared to Invicta's). However, KIRA does not meaningfully demonstrate that the agency failed to consider in its evaluation any specific advantageous aspect of KIRA's proposal. Accordingly, KIRA's arguments represent nothing more than disagreement with the agency's judgement about the relative merits of its alleged discriminators and do not provide a basis to sustain a protest.

question the SSA's tradeoff decision. Here, the RFP provided for award on a best-value tradeoff basis where price was the single most important factor. See RFP at 75. Despite KIRA's contentions, the contemporary record acknowledged and documented the advantages of the higher-priced, higher-rated offer, and explained that they were not worth the price premium. In these circumstances, the award to Invicta was reasonable.

Failure to Provide Pre-Award Notice of Intent to Make Award

KIRA contends that the agency violated FAR 15.503(a)(2) by failing to provide a pre-award notice of the agency's intent to make award to Invicta. Protest at 10-12; Comments & Supp. Protest at 24-29. In procurements set aside for small businesses, FAR 15.503(a)(2) requires the contracting agency to inform each unsuccessful offeror, in writing, of the identity of the apparent successful offeror prior to making award.¹² The protester contends that it was prejudiced by the agency's failure in this regard because the lack of notice prohibited KIRA from filing a pre-award challenge to Invicta's eligibility for award under a solicitation set aside for small businesses. KIRA contends that had it received notice, its challenge would have prevented the contract award to Invicta. Protest at 11; Comments & Supp. Protest at 27-28.

The agency does not argue that it provided KIRA with the pre-award notification required under FAR 15.503(a)(2). See COS/MOL at 9. Instead, the agency and intervenor argue that KIRA was not prejudiced by the omission because KIRA still could have filed a post-award challenge to Invicta's size status with the Small Business Administration (SBA), but did not. Intervenor's Request for Partial Dismissal at 6-9; Intervenor's Comments at 20-24; see also COS/MOL at 7 (agreeing with arguments presented in the intervenor's request for partial dismissal without further explanation).

The purpose for this pre-award notice is to allow unsuccessful offerors the opportunity to have the SBA review the prospective awardee's size status before award. See *Spectrum Sec. Servs., Inc.*, B-297320.2, B-297320.3, Dec. 29, 2005, 2005 CPD ¶ 227 at 3-4. A failure to provide such a pre-award notice is procedural in nature and our Office will not sustain a protest of an agency's failure to comply with this pre-award notification requirement absent competitive prejudice to the protester. See, e.g., *K2 Solutions, Inc.*, B-417689, Sep. 24, 2019, 2019 CPD ¶ 330 at 8 (citing *Jensco Marine, Inc.*, B-278929.7, Feb. 11, 1999, 99-1 CPD ¶ 32 at 3). Where an agency fails to give required pre-award notice of award to allow for size protests, our Office will not find the award improper unless a timely post-award size protest was filed and the awardee was found to be other than small. See *Science Sys. & Applications, Inc.*, B-240311, B-240311.2, Nov. 9, 1990, 90-2 CPD ¶ 381 at 1, 9.

¹² This FAR section also states that the pre-award notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the SBA's 8(a) program. FAR 15.503(a)(2)(iii). The agency does not argue that either exception applies here.

Here, the agency's failure to notify KIRA of the award until after it had been made was clearly contrary to the FAR requirements. However, the protester does not allege that it ever filed a post-award size protest with the SBA.¹³ The Small Business Act, 15 U.S.C. § 637(b)(6), gives the SBA, not our Office, conclusive authority to determine matters of small business size status for federal procurements. 4 C.F.R. § 21.5(b)(1); *Randolph Eng'g Sunglasses*, B-280270, Aug. 10, 1998, 98-2 CPD ¶ 39 at 3. In the absence of an SBA determination that Invicta is not small for this procurement,¹⁴ our Office sees no basis to find that KIRA was competitively prejudiced by the award to Invicta as a result of the Navy's failure to give pre-award notice of the award.

The protest is denied.

Thomas H. Armstrong
General Counsel

¹³ KIRA asserts that the SBA's regulations generally do not require "an agency to take any action in response to" a sustained post-award size protest. Comments & Supp. Protest at 27 (*citing* 13 C.F.R. § 121.1009). To the contrary, SBA's regulations explicitly require that if a contracting officer receives a size determination from an SBA area office that an awardee concern is not an eligible small business for the procurement in question after award, and no appeal has been filed with the SBA Office of Hearings and Appeals (OHA), then "the contracting officer shall terminate the award." 13 C.F.R. § 121.1009(g)(2)(i). The protester does not point to, and our review of the regulation in question did not reveal, any language limiting this requirement to pre-award size protests.

¹⁴ In support of its arguments, KIRA cites to *Spectrum Sec. Servs., Inc., supra, Tiger Enters., Inc.* B-292815.3, B-293439, Jan 20, 2004, 2004 CPD ¶ 19, and *Science Sys. & Applications, Inc.*, B-236477, Dec. 15, 1989, 89-2 CPD ¶ 558, arguing that these decisions establish that failure to provide pre-award notice "render[s] a size protest irrelevant." However, our Office sustained each of the above-cited protests based on post-award size protests that resulted in SBA determinations that the awardee concerns were not small for the procurement in question. The protester has not provided evidence of any such SBA determination here.