



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: The Great Lakes Towing Company

File: B-277363

Date: August 28, 1997

George L. Sogor for the protester.

Charles A. Johnson, Esq., Military Sealift Command, Department of the Navy, for the agency.

Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracts were awarded to other than the offeror proposing the lowest price is denied where agency record clearly establishes the contrary.
 2. Where agency clearly communicated its interpretation of the solicitation requirements to protester prior to requesting best and final offers, protester's post-award protest of the solicitation requirements is untimely.
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DECISION

The Great Lakes Towing Company (GLT) protests the Department of the Navy's award of contracts to provide ship tugboat docking services at various ports.

We deny the protest.

On May 16, 1997, the Department of the Navy, Military Sealift Command, issued solicitation No. N00033-97-R-7043, seeking proposals for tugboat services at 10 ports along the Great Lakes waterways. On May 27, various offerors, including GLT, submitted initial proposals. GLT's proposal included various pricing options, reflecting different prices depending on how many of the ports it was awarded. Written discussion questions, dated June 6, were sent to the offerors. Oral discussions were conducted on June 9. GLT asserts that during the oral discussions the Navy's contract specialist advised GLT that its multi-port pricing was unacceptable and that the RFP required submission of individual pricing for each port. Thereafter, Best and final offers (BAFO) were submitted. GLT's BAFO contained two types of pricing: individual pricing for each port and an "all ports" package containing prices that would be applicable if GLT were awarded contracts for all ports.

The agency awarded contracts for the various ports on June 18, with GLT receiving contract award for 5 of the 10 ports. This protest followed.

GLT's protest contains the following stated grounds of protest:

1. Section M1 [of the RFP, titled] Evaluation Factors for Award was not followed by MSC because we were verbally advised that our lowest price offer would not be evaluated since MSC intended to award individual contracts for each port; yet MSC awarded one (1) contract to GLT covering five (5) ports;
2. Criteria and specifications other than the ones set forth in the solicitation were used in the evaluation and award procedure. MSC's "[d]iscussions" letter . . . dated June 6, 1997[,] asks "What is the firepump capacity for the tug(s) you are offering?" The solicitation does not specify a firepump requirement, nor did GLT offer tugboats equipped with firepumps;
3. Contract award(s) were made to other than to the lowest price offeror. Amendment 0003 [of the solicitation] . . . dated June 4, 1997[,] reopened the solicitation to "enhance competition." During telephone discussions with [the MSC contract specialist] Mr. Romano, he stated that GLT's "All Ports Packaging Pricing" could not be considered because it would be restricting competition. MSC is obligated to follow the solicitation's evaluation criteria and make an award to the lowest price, responsible offeror(s) which result in the lowest cost to the Government in accordance with Section M1 of the solicitation;
4. GLT was given incorrect instructions by Mr. Romano during discussions on June 9, 1997[,] and thereby reduced the number of pricing options from seven (7) to two (2) based on Mr. Romano's statement that our option pricing cannot be considered. Our competitiveness was reduced and the Government did not award a contract for each port as represented during discussions.

At our request, the Navy submitted the BAFO price sheets which formed the basis for each of the awarded contracts.¹ These documents show that the agency awarded contracts to the offeror proposing the lowest price for each of the ports

¹In its protest, GLT requested that our Office process this protest under the express option/accelerated schedules provisions of our Bid Protest Regulations. 4 C.F.R. § 21.10 (1997). In an effort to expedite protest resolution, our Office initiated several conference calls with the parties' representatives, requesting and obtaining early production of certain identified documents.

and, further, that none of the other awardees submitted proposals with multiple pricing options. Following submission of these documents, GLT offered no evidence or arguments that the documents submitted by the Navy were inaccurate. Accordingly, there is no factual support for GLT's assertion that contracts were awarded to other than the lowest-priced offeror, or that GLT was otherwise treated unequally.

The remaining portions of GLT's protest constitute challenges to the agency's interpretation of the solicitation, which the agency clearly communicated to GLT prior to GLT's submission of its BAFO. Rather than then protesting the clearly communicated solicitation requirements, GLT chose to submit its BAFO.

In procurements where proposals are requested, alleged improprieties which do not exist or are not apparent in the initial solicitation, but which are incorporated into the solicitation or become apparent subsequently must be protested not later than the next closing time for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (1997). Here, GLT elected not to protest the clearly established solicitation requirements prior to submitting its proposal, and its post-award challenge of those provisions is untimely.

The protest is denied.

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