DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

00484

FILE: B-184880

DATE: February 6, 1976

MATTER OF: Budget Rent-A-Car of Washington, Inc.

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99139

DIGEST:

1. Protest against use of clause in RFP requiring contractor to pay fee of 10 percent of its gross receipts derived from operation at airport is untimely since section 20.2(a) of our Bid Protest Procedures provides that if protest has been filed initially with contracting agency, subsequent protest to our Office must be within 10 working days of formal notification of initial adverse agency action. Protester received agency denial on June 10, 1975, and protest was not received in our Office until September 5, 1975.

2. Protest against failure of RFP to set forth weights accorded evaluation criteria is untimely pursuant to section 20.2(b)(1) of GAO Bid Protest Procedures which provides that protest based on alleged impropriety in solicitation shall be filed before closing date for receipt of initial proposals and protest was received after such date.

3. Contention that procurement was "tinged with secrecy, irregularity and caprice" is not supported where negotiated procurement is involved and there is no public opening of proposals, identity of offerors is not disclosed prior to award and amount of offerors' proposals are not disclosed until after award. Furthermore, protester was correctly advised of successful offeror after award pursuant to FPR § 1-3.103(b).

This involves a protest by Budget Rent-A-Car of Washington, Inc. (Budget), against the award of a contract for an off-airport "economy" type rent-a-car service for Washington National Airport, to the Vialease Corporation, d/b/a Airways Rent-A-Car, under request for proposals (RFP) No. DOT-FA-NA-75-1, issued by the Department of Transportation, Federal Aviation Administration (FAA), Washington, D.C.

Counsel for the protester has objected to the inclusion of a so-called "10% clause" in the RFP. The clause states that for the right to provide the services contemplated by the RFP and occupy the space assigned, the contractor shall pay a fee of 10 percent of its gross receipts derived from its operations at the airport or a fee based on the total number of all passengers deplaned at the airport, whichever fee is higher in each contract year. Counsel argues that (1) Budget was placed at a competitive disadvantage because of this required 10-percent clause; (2) the 10-percent requirement is grossly discriminatory against the large off-airport companies because they would be forced to pay for business they already have; (3) the clause shows favoritism towards Avis Rent-A-Car, Hertz Rent-A-Car, and National Car Rental since, although they must pay the same percentage fee, they are provided on-airport facilities not provided to Budget and other off-airport companies. In addition, counsel argues that "Procedurally, the entire bidding process in this matter was tinged with strange secrecy, irregularity and caprice." Specifically, counsel refers to the failure to inform offerors as to weights accorded the various evaluation criteria, the secrecy surrounding the "opening of bids," the procedure by which Budget was informed that award had been made, and the "substantial evidence" that the "bids" were opened before the designated opening date.

The RFP was issued on April 25, 1975, as a negotiated procurement with the closing date for receipt of initial proposals scheduled for June 9, 1975. The FAA was informed prior to Budget's submission of its proposal and again during the negotiations that it found the 10-percent clause objectionable. This was interpreted as a protest by the FAA and by letter dated June 6, 1975, FAA informed Budget of its intention to allow the 10-percent clause to remain in the RFP. We have been advised that Budget received this denial of its protest on June 10, 1975. Section 20.2(a) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provides that if a protest has been filed initially with the contracting agency, any subsequent protest to our Office within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered. Since the protest was not received in our Office until September 5, 1975, it is untimely and will not be considered on the merits.

Counsel maintains that the "bidders had no meaningful idea of the weight accorded to the various listed criteria." Section 20.2(b)(1) of our Bid Protest Procedures, supra, requires that

protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. Since Budget did not protest the apparent lack of weights accorded to the various evaluation criteria prior to the closing date for receipt of initial proposals, this aspect of the instant protest is also untimely. However, we note that the RFP clearly states that the evaluation criteria are listed in descending order of importance. Our Office has held that disclosure of precise numerical weights assigned to factors used in evaluating proposals is not required so long as offerors are informed of the broad scheme of scoring to be employed and the relative weights of factors to use in evaluating proposls for award. See Frequency Engineering Laboratories, B-181409, October 16, 1974, 74-2 CPD 208.

In regard to counsel's argument that the "entire bidding process in this matter was tinged with strange secrecy, irregularity and caprice," we fail to find any evidence that this is the case. We note that unlike a formally advertised procurement, in a negotiated procurement the proposals submitted are not publicly opened, the identity of the offerors is not disclosed prior to award, and the amount submitted by one offeror is not disclosed to other offerors until after award. See Part 1-3, Federal Procurement Regulations (1964 ed. circ. 1).

Counsel argues that Budget was not notified of the successful offeror until after the contract was executed. The record indicates that the contract was awarded on August 26, 1975. Notification letters were mailed to all unsuccessful offerors, including Budget, on the same date. Budget received its letter on August 28, 1975. This is the proper procedure under Federal Procurement Regulations § 1-3.103(b) (1964 ed. circ. 1), which provides for notification to unsuccessful offerors after the award has been made in any procurement in excess of $10,000.

Finally, counsel argues that there is substantial evidence that the "sealed bids" were opened before the designated opening date. Counsel has failed to submit any evidence to support this charge. In the absence of any probative evidence, we are unable to conclude that the proposals were opened before the designated opening date.

The protest is denied.

Deputy Comptroller General
of the United States