

6429
DECISION



92-11
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-191409

DATE: May 17, 1978

MATTER OF: Southern Bell Telephone and
Telegraph Company

DIGEST:

Protest based upon improprieties apparent on face of solicitation and subsequent adverse agency action is dismissed because it was not filed before closing date for receipt of initial proposals or within 10 days of initial adverse agency action.

Southern Bell Telephone and Telegraph Company (Southern Bell) protests the anticipated award of a contract to another company under Request for Proposals (RFP) No. 10-40021-7 issued by the Kennedy Space Center, National Aeronautics and Space Administration (NASA).

The RFP called for offers to lease an automatic dial telephone system for the Kennedy Space Center and required offerors to submit an option for the transfer to the Government of title to the equipment. Southern Bell, the incumbent contractor, filed its protest in this Office on March 6, 1978 contending that NASA had improperly excluded it from the competitive range, and that NASA had failed to evaluate properly both the system costs as defined in the RFP and other relevant costs to be incurred by the Government if an award were made to any other contractor. The protester also objects to NASA's failure to consider its late proposal. Southern Bell requests this Office to direct NASA to award it the contract, to revise the solicitation to provide for the evaluation of all costs to the Government or to evaluate properly under the current RFP all system costs to be incurred by the Government prior to an award to any other company.

NASA contends in the circumstances enumerated below, that the protest is untimely.

The RFP was issued on March 25, 1977 with a closing date for proposals of July 12, 1977. Southern Bell was notified on October 20, 1977 that its basic and alternate proposals were not within the competitive range and would no longer be considered for award because the prices were too high and because neither alternative provided for the required option for transfer of equipment title. On November 21, 1977, Southern Bell submitted another proposal. However, by letter of December 7, 1977, Southern Bell was advised that the proposal did not offer a significant reduction in costs to the Government or other technical improvements as compared with proposals previously submitted. Accordingly, the proposal was rejected as late. NASA Procurement Regulation 3.802.4(c). When Southern Bell heard on February 17, 1978 of NASA's intent to make an award to another company, it requested a debriefing which was conducted on February 27, 1978.

Southern Bell states that one year before the release of the RFP, NASA was aware of its position that Southern Bell's existing station cabling would have to be acquired by any new contractor unless new cable is installed and that its reimbursement cost could only be ascertained by a physical inventory or a formal estimate based on scientific sampling. It states that its offers to make such inventory or estimate were rejected by NASA. Thus, NASA was already aware of its position when the RFP was amended on May 6, 1977 to provide for proposal evaluation purposes an "arbitrary" figure of \$154,130.00 to be used by all offerors except Southern Bell for the costs of acquiring the existing cabling with the understanding that the Government would by contract amendment absorb all actual costs. Southern Bell maintains that it manifested its concern about the \$154,130.00 figure again to NASA officials in a meeting on January 17, 1978, and in a dataphone message on February 14, 1978. Southern Bell further states that upon its receipt of the October 20 letter it orally informed NASA that it did not want to be removed from the competitive range but that it

did not have sufficient information to file a protest until the debriefing. It argues that the "final" adverse agency action was the announcement of February 17, 1978 of the intended award to another company and only at that time could it have been aware that its oral protests were no longer being considered by NASA.

In our view, Southern Bell's protest is untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2 (1977). Protests based upon alleged improprieties apparent upon the face of the solicitation must be filed prior to the closing date for receipt of initial proposals and protests based upon other grounds must be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. Section 20.2(a) of our Bid Protest Procedures, supra, makes it clear that it is the "initial" rather than the "final" adverse agency action which starts the 10 day protest period. El Toro Materials Co.--Reconsideration, B-186514, September 17, 1976, 76-2 CPD 254.

Therefore, to the extent that Southern Bell's protest is based upon the impropriety of the \$154,130.00 evaluation figure set forth in the amendment of May 6, 1977 and any other evaluation factors which were included or should have been included in the solicitation and its amendments, its right to protest expired on the due date for initial proposals. At that time, Southern Bell knew or should have known that it had been unsuccessful in its previous efforts to convince NASA to establish a higher estimate of the cost of the existing station cable. If the \$154,130 figure is arbitrary and improper as Southern Bell claims, it should have been obvious to Southern Bell before the due date for the initial proposals. Further, the option requirement in the solicitation clearly rendered hopeless the competitive posture of Southern Bell unless either it or NASA changed its position with regard to the transfer of equipment title to the Government. Any objections of Southern Bell to this provision should have been protested before the due date. The remote possibility that the option requirement would be waived during evaluation provides no basis for delay of protest.

We believe that the exclusion of Southern Bell's proposals from the competitive range was indicated by the provisions in the amended solicitation. The protester's proposals could not have been accepted without agreeing to an option unless the solicitation was amended. In any event, whatever remained of Southern Bell's right to appeal to this Office expired ten working days from its receipt of the October 20, 1977 letter which clearly stated the reasons for excluding Southern Bell's proposal from the competitive range. Power Conversion, Inc., B-186717, September 20, 1976, 76-2 CPD 256. It could not resurrect the right to protest the exclusion by requesting a debriefing more than three months later. Singer Company, B-186547, December 14, 1976, 76-2 CPD 481.

While an oral protest to an agency may be acceptable, a mere statement of concern that one does not want to be removed from the competitive range is not sufficient to initiate the protest process. Moreover, we are not persuaded by the record that Southern Bell did not have the essential information it needed for protest well before its request of February 17, 1978 for a debriefing. This Office has held that where a protester is sufficiently apprised of the basis for protest prior to debriefing, it would be inappropriate to permit an unreasonable delay in filing the protest pending the debriefing since no apparent useful purpose would be served thereby. Informatics, Inc., B-188564, April 18, 1977, 77-1 CPD 272.

By December 7, 1977, Southern Bell's two initial proposals and its late proposal had been rejected. Thereafter, its interest in any subsequent actions of NASA regarding this procurement was clearly not that of a competitor with a reasonable chance of award.

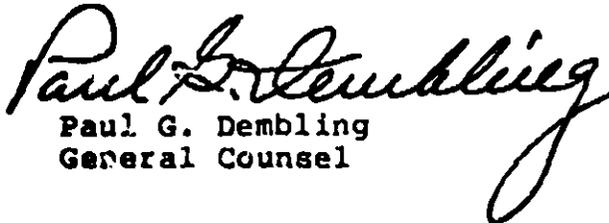
Finally, Southern Bell argues in the alternative that even if its protest should be considered untimely it should be considered on the merits under the exceptions to the timeliness requirements set forth in our Bid Protest Procedures 20.2(c). That rule provides that an untimely protest may be considered if it raises a question of significance to procurement

practices or procedures, or for good cause shown. Southern Bell argues that NASA's failure to consider more than \$4.5 million in real and quantifiable costs to the Government in an award to any company other than itself constitutes a disregard for the plain language of the solicitation and an unfairness to all offerors whether they be incumbents or new offerors. Southern Bell further contends that it and other regulated telephone companies will be unable to compete fairly for future Government business if such costs are ignored.

We have held that the significant issue exception to the timeliness requirement must be exercised sparingly if our standards are not to become meaningless. Comten, B-185394, February 24, 1975, 76-1 CPD 130, affirmed B-185394, May 18, 1976, 76-1 CPD 259. Thus, we will not regard an issue as significant unless it is of widespread interest or goes to the heart of the competitive procurement process. Williamette-Western Corporation, et al, 54 Comp. Gen. 375, 376 (1974), 74-2 CPD 259. The significance of an issue for purposes of this exception does not depend upon the amount of money involved. 52 Comp. Gen. 20, 23 (1973). The issues presented here, which are important to Southern Bell, can best be resolved in a timely protest. We cannot conclude that they are of such widespread interest as to warrant consideration here under this exception to our timeliness requirements. Power Conversion, Inc., supra.

Although we would consider an untimely protest for "good cause shown," this refers to some compelling reason beyond the protester's control which prevented it from filing a timely protest. International Computaprint Corp., B-186948, October 28, 1976, 76-2 CPD 357. The record in this case reveals no such reason.

Accordingly, this protest is dismissed.


Paul G. Dembling
General Counsel