

Luster
PL-1

DECISION



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

9103

B-193264

FILE: Solar Resources Inc.

DATE: February 9, 1979
00847

MATTER OF:

DIGEST:

[Allegation that "List of Bidders" Did Not Include Awardee] 00843

1. GAO finds no basis to conclude that validity of award was affected by failure of Veterans Administration (VA) to revise list of prospective offerors furnished to protester 1 month before closing date for receipt of proposals. VA is not required to automatically disclose the identity of each and every new prospective offeror. Furthermore, Federal Procurement Regulations prohibit disclosure of identity of offerors during course of negotiations.
2. Large businesses are not prohibited from obtaining copies of solicitation and submitting a courtesy offer which contracting officer may use in determining whether small business bid prices are reasonable. In any event, protester has remedy of filing size protest with contracting officer should procuring agency make award to offeror improperly certified as small business. Federal Procurement Regulations allow protest against size in negotiated procurements to be filed within 5 days of whenever contracting officer gives notification of identity of offeror being protested.
3. While GAO will examine agency's refusal to extend closing date for receipt of proposals to see if it was arbitrary or capricious, where extension is granted there is no basis for objection by GAO whose primary concern is undue restriction in solicitations rather than increased opportunity for competition.

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4. Protester has offered no probative evidence that VA was improperly involved with awardee. Therefore, since it is not function of GAO to conduct investigations pursuant to bid protest function in order to establish protester's speculative allegations, there is no need to provide additional information requested by protester.

Solar Resources Inc. (Solar) protests award under request for proposals (RFP) 664-54-78AT issued by the Veterans Administration (VA) Hospital at San Diego, California. The RFP was a total small business set-aside and solicited proposals for a solar heating and cooling system at the hospital.

Solar complains that on February 15, 1978, the VA furnished it with a "list of bidders" which did not include the name of the eventual awardee, Brinderson Corporation (Brinderson). Solar alleges that the VA never revised this list and that, consequently, it was "completely surprised" to learn on October 13, 1978, that Brinderson was the awardee. Solar has protested to the contracting officer that Brinderson is not a small business and the contracting officer has referred the matter to the Small Business Administration (SBA). Brinderson has been directed to suspend all work under the contract pending a decision from the SBA.

In bringing this protest, Solar recognizes that small business matters are not, for the most part, handled by our Office. Nevertheless, Solar contends that there is evidence of improper procurement practices by the VA which do come under our jurisdiction. In addition to the fact that Brinderson was not on the above-mentioned list of bidders, Solar states the contracting officer on February 21, 1978, extended the closing date for receipt of proposals from March 14, 1978, to April 11, 1978. On April 4, 1978, the contracting officer again extended the closing date from April 11 to April 18, 1978. Solar alleges that there is a possibility that the extensions of the closing date and the addition of Brinderson resulted from "improper involvement."

The VA indicates that Brinderson prepared a proposal jointly with McCaughey and Smith Energy Associates, Inc. (McCaughey), Tusin, California, the company which had initially obtained the RFP. Brinderson elaborates on this matter by stating that McCaughey solicited its participation in the joint preparation of a proposal. The decision to submit the proposal under the name of Brinderson was solely an internal one between itself and McCaughey. Brinderson also states that it was and still is unaware of any requirement to notify other bidders prior to the submission of a bid package.

With regard to the extensions of the closing date, the VA states that the first extension was made because several prospective offerors informed it that there was insufficient time to prepare a proposal under the RFP and because three drawings were incorporated into the RFP. The second extension was made because of a change in the bonding requirements in the RFP.

Brinderson categorically denies any involvement in the extensions of the closing date. Brinderson states that its proposal was prepared and ready for submission on the original closing date. Therefore, Brinderson argues that the closing date extensions were made at the discretion of the contracting officer and were not in response to any requests from it.

In response to the VA, Solar alleges that the RFP was issued on January 26, 1978. Thus, the period for proposal preparation was almost 7 weeks. According to Solar, this was ample time for a competent company to prepare a proposal and was consistent with the usual 6- to 8-week period usually provided for in this type of Government procurement. Further, Solar alleges that it has never been able to obtain an extension in a closing date or bid opening date because of insufficient time. Finally, Solar points out that the instrument used to extend the original closing date (standard form 30) did not mention insufficient preparation time as a basis for the extension.

Solar acknowledges that the instrument that extended the original closing date did add three drawings to the RFP. However, Solar argues that these drawings

were not necessary for the preparation of a proposal. Solar alleges that it obtained all the information contained in the drawings during a visit to the project site itself. Consequently, Solar contends that the addition of three minor drawings could not possibly have been the reason for the first extension of the closing date.

As to the second closing date extension, the VA's revision of the bonding requirements was, according to Solar, an elimination of the need to provide a bond with the proposal. A bid guaranty was not required until Phase III (construction) of the contract. Since the elimination of the bonding requirement actually reduced the amount of work necessary to prepare a proposal, Solar argues that it should not have been necessary to extend the closing date.

Solar requests information regarding the identities of those prospective offerors who requested additional time to prepare a proposal and the dates on which their requests were made. Solar also seeks information concerning when McCaughey obtained an RFP from the VA and when they made arrangements to cooperate with Brinderson on the preparation of a proposal.

We see no basis for concluding that Solar was prejudiced or that the validity of the award was affected by the actions of the procuring agency. We are unaware of any statute or regulation that requires an agency to automatically disclose the identity of each and every prospective offeror. Furthermore, the Federal Procurement Regulations (FPR) § 1-3.805-1(b) (1964 ed. amend. 153) provides that after receipt of proposals, no information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to anyone whose official duties do not require such knowledge. Consequently, we conclude that the VA had no legal obligation to inform Solar of either new prospective offerors who requested a solicitation after February 15, 1978, or any offeror under the solicitation itself.

Apparently, Solar desired the identities of all firms requesting a solicitation in order to ascertain whether any might be large businesses. However, involvement of large businesses in small business set-aside procurements is not completely precluded. We have held that large business bids on small business set-aside procurements, while nonresponsive, are regarded as "courtesy" offers and may be considered in determining whether the small business bids submitted are reasonable. Tufco Industries, Inc., B-189323, July 13, 1977, 77-2 CPD 21. Moreover, should the contracting agency make an award to a company that is improperly certified as a small business, the other small business offerors have the available recourse, as Solar did here, of lodging a size protest with the contracting officer. In the case of negotiated procurements, an offeror may protest against another offeror's small business status within 5 days of whenever he received notification from the contracting officer of the identity of the offeror being protested. FPR § 1-1.703-2(b)(1) (1964 ed. amend. 192).

Turning to the two extensions of the closing date for receipt of proposals, while we will examine an agency's refusal to grant an extension to see if it was arbitrary or capricious (see National Small Business Association, B-184052, September 26, 1975, 75-2 CPD 196), where an extension is granted, the effect of which is to enhance competition by permitting offerors plenty of time to carefully consider and review their prices and proposals, there is no basis for any objection by our Office whose primary concern is the undue restriction in solicitations rather than the increased opportunity for competition.

Finally, in light of our decision above, we see no purpose in pursuing Solar's request for additional information. Moreover, it is not the practice of this Office to conduct investigations pursuant to our bid protest function for the purpose of establishing the validity of a protester's speculative statements. Mission Economic Development Association, B-182686,

August 2, 1976, 76-2 CPD 105. In the absence of probative evidence, as is the case here with regard to Solar's allegations of improper agency involvement with Brinderson, we must assume that a protester's allegations are speculative and conclude that protester has not met its burden of proof. Dependable Janitorial Service and Supply, B-190231, January 3, 1978, 78-1 CPD 1.

Accordingly, Solar's protest is denied.

R. Q. Ketchum
Deputy Comptroller General
of the United States