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Legal

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DECISION



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

FILE: B-194553

DATE: March 11, 1980

MATTER OF: Jack Thrift and Company DLG04082

DIGEST:

Protester has not shown that proposed award of contract to lowest priced technically acceptable offeror was result of bias toward that firm.

Jack Thrift and Company (Thrift) ^{INVOLVING} protests ~~the~~ proposed award of a contract to Klein-Sieb Advertising and Public Relations, Inc. (Klein-Sieb) ^{DLG04083} under request for proposals (RFP) No. F09650-79-R-0017, issued by the 3503rd Air Force Recruiting Group, Robins Air Force Base, Georgia. ^{DLG04084} The purpose of the solicitation was to obtain advertising services in support of the recruitment of active duty personnel (as opposed to reservists) in a multi-state area.

The Air Force states that in the past it had some unfortunate experiences as the result of awarding advertising contracts to firms which lacked the skill to manage them. In order to avoid that problem under this solicitation, each offeror was required to submit a technical proposal demonstrating its technical expertise. In addition to answering a questionnaire concerning its organization, professional association memberships, capabilities, and past services indicative of the ability to handle Air Force recruiting, each firm was to describe how it would conduct a variety of advertising campaigns designed to reach different groups of potential recruits, based upon certain assumptions given in the RFP. For example, offerors were asked to describe a recommended advertising campaign directed at physicians, dentists and veterinarians, given certain recruitment goals, qualification requirements, salary schedules, a budget, and an age grouping. These sample advertising campaigns were requested in paragraphs 7 and 8 of the questionnaire.

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The unpriced technical proposals were submitted to a "Technical Expertise Evaluation Board" which determined which offerors had demonstrated an acceptable level of technical expertise. Offerors who failed to meet this level were eliminated from further consideration; the contract was to be awarded to the lowest priced, technically acceptable offeror. The entire evaluation and award scheme was set forth in the solicitation.

Of the seven offerors, four (including Klein-Sieb) were determined to be qualified to perform this contract. Three offerors, including Thrift, were not. The Air Force proposed to make award to Klein-Sieb as the lowest priced, technically acceptable offeror. A contract was not awarded under this RFP because of Thrift's protest; however, the advertising services were obtained from Klein-Sieb through a series of delivery orders under another existing contract which that firm had with the Air Force.

Thrift's protest does not seriously question the basic facts that Klein-Sieb was the lowest priced, technically acceptable offeror and that Thrift was fourth low and technically unacceptable. (Thrift was found technically unacceptable because in its proposal it omitted any response to paragraphs 7 and 8 of the RFP questionnaire. Only in its protest filed after the RFP's closing date, does Thrift allege that the requirements of those paragraphs were too "complex." That basis for protest is untimely under our bid protest procedures, 4 C.F.R. § 20.2(b)(1) (1979). Thrift also suggests that Air Force employees could have altered Klein-Sieb's offer to make it low, but has provided no proof in support of this speculative assertion.)

What Thrift has protested is a large number of actions and statements by Air Force employees whom Thrift accuses of "bid rigging" in favor of Klein-Sieb because that firm did public relations work for a United States Senator who is a member of the Committee on Armed Services. Starting with this unproven premise, Thrift finds in any Air Force action with which it disagrees, evidence of a conspiracy to favor Klein-Sieb. We have carefully considered these allegations and find them to be untimely or without merit for the reasons briefly indicated below.

Thrift's first contention is that "vital information was withheld" when the RFP was issued. This refers ~~to the fact that~~ a list of recruiting offices mentioned in the RFP was omitted from it and that Thrift thought unsatisfactory the Air Force's response to a Freedom of Information Act (FOIA) request concerning Klein-Sieb's existing Air Force contracts.

The contracting officer states that although the list of recruiting offices had been included in a draft RFP, it later was decided the list was not necessary for the preparation of a proposal and so it was not included. The reference to the list which appeared in the RFP should have been deleted but was not, through oversight. Nevertheless, after Thrift's inquiry, the RFP was amended and the list was provided to all offerors prior to the proposal due date. Although Thrift subsequently complained it did not have enough time to consider that information, this point was not timely raised under our procedures, 4 C.F.R. § 20.2(b)(1).

Although Thrift may have been dissatisfied with the Air Force's response to his FOIA request, that information was not required to be distributed with the RFP. We do not believe its failure to meet Thrift's expectations provides a basis for finding that "vital information" was withheld from offerors.

Thrift next alleges that it was provided erroneous and inaccurate information after the RFP was issued. In this connection, we note the failure of the RFP to state the hour of the preproposal conference was cleared up by telephone the preceding day. The other basis for this protest appears to be a misunderstanding between the contracting officer and Thrift as to Klein-Sieb's existing contractual arrangements with the Air Force, which also was clarified by telephone before proposals were due.

There is nothing in the record to suggest that the omission of the hour of the preproposal conference from the RFP or any inaccurate informal advice by the contracting officer was deliberate and both matters were clarified in a timely fashion.

Thrift's contentions that the RFP's estimate of outdoor advertising was inaccurate and the solicitation required overly "complex" proposals will not be considered on the merits since they were not filed until after the closing date for receipt of proposals. 4 C.F.R. § 20.2(b)(1).

We do not believe any impropriety in this procurement is shown by Thrift's recitation of alleged "bid rigging" by unnamed Government employees under other, unidentified past procurements.

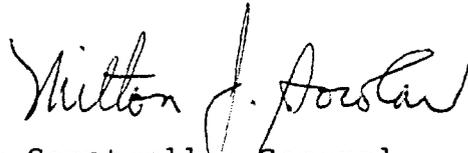
Thrift also protests that the proposal due date was changed a third time on the day proposals were due. The Air Force explains that it extended the due date two weeks in order to permit Thrift to consider FOIA material which was not made available to it until the day proposals were due. We fail to see any merit to this basis for protest.

Finally, Thrift complains that it was "refused access" to Air Force files under the FOIA. From the statements in the file it appears Mr. Thrift arrived at Robins in the afternoon of April 6, 1979, when proposals were due, was handed documents in response to an earlier FOIA request and was advised an amendment had been issued extending the due date by two weeks. Mr. Thrift then requested that Air Force files relating to the prior year's advertising contract be given to him that afternoon for inspection under the FOIA. He was advised that his request would have to be more specific, that the files would have to be examined for documents which should not be released, and that upon receipt of a proper request the Air Force would respond well within the 10-day period permitted by law. There is no indication that Thrift ever renewed its request.

The relevance of this incident to Thrift's ability to compete for this contract has not been explained. Apparently it is considered by Thrift to be further evidence of bias favoring Klein-Sieb. We do not find it persuasive.

For the reasons stated above, we do not believe Thrift has shown the Air Force improperly determined Klein-Sieb entitled to the award of this contract as the lowest priced technically acceptable offeror.

The protest is dismissed in part and denied in part.

A handwritten signature in cursive script, reading "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name and title.

For the Comptroller General
of the United States