

DECISION



13161 *Baskin*  
*Proc II*  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-195919.3

DATE: March 18, 1980

MATTER OF: Ronald Campbell Company

*CNG 02459*

DIGEST:

1. Protester cannot submit price proposal under the condition that technical proposal will be submitted if GAO so directs. Where no technical proposal was submitted, agency properly rejected offer, notwithstanding its lower price, since solicitation stated that technical considerations were paramount to price consideration, that proposals must indicate that offeror understood scope of work in order to be considered and that proposals merely offering to satisfy Government's scope of work would not be considered further.
2. Failure to follow regulation in making award during pendency of protest is procedural defect not affecting award and not prejudicial to protester who was properly found unacceptable.

Ronald Campbell Company [<sup>Against</sup> protests the rejection of its proposal] and the award of the contract for magazine subscriptions to another firm under request for proposals 263-79-P(66)-0315, issued by the Department of Health, Education and Welfare.

Campbell's proposal consisted of its prices and a cover letter indicating that it had protested to this Office and if we so ruled, it would submit a technical proposal. The referenced protest was dismissed as untimely according to our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1979). The dismissal was affirmed in Ronald Campbell Co.--Reconsideration, B-195919.2, November 29, 1979, 79-2 CPD 382.

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Campbell now contends that it should have been selected for award because it was the low offeror. HEW reports that it rejected Campbell's proposal because Campbell refused to comply with RFP instructions to submit both technical and business proposals. In response, Campbell asserts that, as stated in the cover letter to its proposal, it was not required to submit a technical proposal until directed to by this Office. Therefore, its price proposal should not have been rejected.

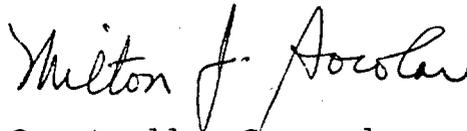
While a contractor is not required to submit a proposal in order to protest solicitation deficiencies, Peninsula Telephone and Telegraph Co., 58 Comp. Gen. 324 (1979), 79-1 CPD 176, the protester accepts the risk that, if it does not submit an offer, there is no basis upon which it can receive an award if the protest is dismissed or denied after the closing date. Campbell could not unilaterally stipulate that HEW accept its technical proposal after the closing date and Campbell's offer could not be accepted on the basis of its price proposal alone. HEW required technical proposals so that it could evaluate the offeror's understanding of the contract's scope of work. The RFP warned offerors that "proposals which merely offer to conduct a program in accordance with the requirement of the Government's scope of work will be considered non-responsive to this request and will not be considered further." In addition, the RFP stated that proposals would be evaluated for technical merit as well as cost, with technical considerations paramount. Since Campbell did not submit a technical proposal, HEW necessarily found Campbell's offer technically unacceptable. Consequently, we cannot object to HEW's determination to exclude Campbell from consideration for award notwithstanding its lower price. A proposal that is unacceptable from a technical standpoint is of no value to the Government regardless of the lower price associated with it. See 52 Comp. Gen. 382 (1972).

Campbell also contends, and HEW admits, that it was improper for HEW to make award while Campbell's earlier protest was pending. Campbell suggests that,

since its low offer was improperly rejected, we direct HEW to 1) "make an equitable adjustment \* \* \* in view of their erroneous method of making an urgent award" and 2) award Campbell, the low offeror, the second through fourth year options now available to the awardee.

Inasmuch as our Office is of the view that Campbell's bid was properly rejected, HEW's failure to follow applicable regulations in making an award during the pendency of a protest, which is a procedural defect not affecting the validity of an award, did not result in any prejudice to Campbell and provides no basis for relief. See Commercial Lawn Maintenance, Inc., B-193626, February 1, 1979, 79-1 CPD 78.

The protest is denied.



FOR THE Comptroller General  
of the United States