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DECISION



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

[Protest Alleging That Solicitation Reduced Competition]

FILE: B-197185

DATE: December 12, 1980

MATTER OF: U.S. Financial Services, Inc.

DLG 04477

DIGEST:

Where protester complained about 9-month system life in solicitation to contracting agency prior to closing date of solicitation, even if protester was not advised prior to closing date that contracting agency did not intend to change requirement, receipt of offers without change in solicitation constituted adverse agency action and subsequent protest to GAO had to be filed within 10 working days after closing date.

U.S. Financial Services, Inc. (USFS), has protested the award of a contract to International ^{CNG 00961} Business Machines Corp. (IBM) by the Defense ^{AG 00479} Communications Agency (DCA) for automatic data processing equipment for the White House.

USFS's protest is based on the contention that the 9-month system life reduced competition and violated the Delegation of Procurement Authority issued by the General Services Administration.

The request for proposals, as issued, at paragraph E.2 read as follows:

"E.2. TERM OF CONTRACT

"Although the Government contemplates use of the hardware for 21 months, from date of installation, the initial term of this contract is nine (9) months."

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On December 20, 1979, amendment No. 1 to the RFP deleted the above paragraph and substituted the following:

"The Government intends to lease the specified equipment defined herein for an initial period of nine (9) months from the date of installation. It contemplates that it may be necessary to extend the lease through a period not to exceed twenty-one (21) months from date of installation. Therefore offerors proposed leasing costs should reflect the requirement for an initial nine (9) months lease (to be paid in nine (9) months separate monthly increments), with leasing thereafter to be on a monthly basis at the option of the Government. For evaluation purposes the system life is nine (9) months."

Amendment 0001 also set a new response date for amended proposals of January 15, 1980. On that date USFS did not submit a revised proposal but allowed to stand its initial proposal which was based on a 21-month system life.

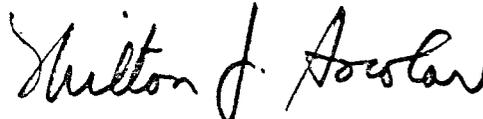
On March 3, 1980, award was made to IBM and USFS was notified that its proposal was rejected as technically unacceptable because of the offered 21-month system life and for other reasons. On March 7, 1980, USFS requested a debriefing which was held on March 18, 1980. USFS filed its protest with our Office on March 28, 1980.

The contention regarding the 9-month system life is untimely under our Bid Protest Procedures (4 C.F.R. part 20 (1980)). USFS complained to DCA about the 9-month system life prior to the January 15, 1980, closing date and it was advised prior to the closing date that DCA did not intend to change the requirement. However, even if such advice was not given prior to the closing date, the receipt of offers on January 15, 1980, without any change in the solicitation constituted adverse agency action on the protest.

In that connection, our Bid Protest Procedures, 4 C.F.R. § 20.2(a) (1980), provide that, following a protest to the agency, any subsequent protest must be filed with GAO within 10 working days after notification of initial adverse agency action. USFS's protest of March 28, 1980, to our Office was well beyond the 10-day time constraint. W. B. Dickey Co. B-199224, July 15, 1980, 80-2 CPD 30.

One basis of USFS's protest is timely because of information it received at the debriefing. USFS argues that DCA could spend \$484,330 over the 21-month lease period and still not own the IBM computer while USFS quoted a purchase price of \$376,000. It appears USFS arrived at the above figure by extending the 9-month lease price offered by IBM. However, based on the 9-month evaluated system life, IBM was the low, technically acceptable offeror and, therefore, this basis of protest is denied.

The protest is dismissed in part and denied in part.



For the

Comptroller General
of the United States