

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

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FILE: B-213752**DATE:** December 27, 1983**MATTER OF:** Base Maintenance Services Co.**DIGEST:**

1. A protest concerning the small business size status of a concern will not be considered by GAO since conclusive authority for size status determinations is vested in the Small Business Administration.
2. Protest that competitor had an unfair competitive advantage because the incumbent contractor assisted it by helping to prepare its proposal, by providing information not available to others, and by denying others access to key personnel is dismissed because private business firms are not required to assist other firms not of their own choosing to prepare proposals simply because they are incumbent government contractors.
3. Protest that agency did not provide offerors with sufficient guidelines as to the extent they could subcontract to large businesses without disqualifying themselves for award of small business set-aside concerns an alleged impropriety in the solicitation which ~~must~~ be filed prior to the due date for receipt of initial proposals. Protest filed ~~several~~ months later is untimely.
4. Proposal revision received after the date set in the solicitation for receipt of proposals offering a substitute for one of the offeror's key personnel who died while agency was evaluating proposals need not be considered despite contracting officer's alleged oral agreement to the contrary because such oral extensions of the submission date for proposals are not binding upon the government, because no changes were made in the offeror's score

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- after the agency was advised that the proposed individual was no longer available, and because the offeror otherwise suffered no discernible prejudice.

Base Maintenance Services Co. protests award under request for proposal No. 8-3-3-AB-30927 issued by the National Aeronautics and Space Administration (NASA) for base maintenance mission services at Marshall Space Flight Center. Base Maintenance contends that the selected offeror, Brown & Associates Management Services, Inc. (BAMSI), does not satisfy the small business set-aside restrictions of the solicitation because of its affiliation with Mercury Consolidated, Inc., the incumbent contractor and a large business firm. The protester also alleges that Mercury engaged in improper business practices, that it could not tell from the solicitation what degree of large business participation was acceptable, and that NASA improperly rejected a revision to its proposal. We dismiss the protest in part and summarily deny it in part.

Base Maintenance alleges that BAMSI had an unfair competitive advantage because only BAMSI had the benefit of Mercury's assistance and detailed knowledge of the work and because Mercury denied other bidders access to its key personnel. Base Maintenance suggests that the two firms have such a relationship that award to BAMSI will simply result in a pass-through of the contract to Mercury, in contravention of both the intent and the letter of the statutes and regulations governing small business set-asides.

To the extent that Base Maintenance is challenging BAMSI's small business size status, under 15 U.S.C. § 637(b)(6) (1982) the Small Business Administration conclusively determines size status for federal procurements. Therefore, our Office will not review questions concerning a bidder's small business size status. Putnam Mills Corporation, B-208249, July 23, 1982, 82-2 CPD 73.

As to the allegation that Mercury refused to provide other bidders with the detailed information about the prior contract that it provided to BAMSI, a private firm is not required to establish business relationships with all others who seek such relationships simply because the firm is the incumbent on a government contract. Rather, the procuring agency has a duty to provide bidders with the information needed to permit bidding on an intelligent and equal basis, through the terms of the solicitation, the

statement of work, bidders' conferences, and access to agency records when necessary. See Crimson Enterprises, Inc., B-209918.2, June 27, 1983, 83-2 CPD 24. There is no allegation here that the information provided by the government was not adequate; instead the protester complains only about the competitive advantage BAMSI gained through its alleged collaboration with Mercury, an advantage denied Base Maintenance. Further, there is not necessarily anything improper with an incumbent contractor's sharing of information with a party of its own choosing, and we are unaware of any prohibition upon such an action.

Base Maintenance also complains that the solicitation did not establish guidelines as to the percent of contract performance which could be subcontracted to large business concerns and that NASA failed to respond to its request for information on this matter prior to the due date for receipt of proposals. In essence, this is an allegation that the provisions of the solicitation relating to small business were not adequate and that clarification of those provisions was needed. Consequently, its protest concerns alleged deficiencies, apparent on the face of the solicitation, which should have been protested prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1983). Since the protest was not filed until several months later, this complaint is untimely and we will not consider it.

Finally, Base Maintenance claims that on October 24, when it advised the contracting officer that it was in the process of securing a replacement for one of its key personnel who died, it was told that the substitution would be considered if received by November 4. However, despite submission by that date, NASA rejected the proposed substitution as a late proposal revision submitted after the closing date of July 16, the acceptance of which was not in the best interest of the government under section 3.802-4 of the NASA Procurement Regulation. Under this regulation, NASA may accept otherwise untimely proposals offering significant cost reduction or technical improvement as compared to competing proposals.

On its face, the substitution of just one individual for another individual of presumably comparable qualifications would not appear to satisfy the criteria permitting consideration of untimely proposals under the NASA regulation. Alternatively, if the contracting officer's remarks are viewed as simply granting an oral extension of the closing date without regard to the regulation, such a purported extension would be improper and

would not bind the government. DBA Systems, Inc., B-212101, July 6, 1983, 83-2 CPD 65; see also Kleen-Rite Corporation, B-209474, May 16, 1983, 83-1 CPD 512. Moreover, because Base Maintenance's evaluation score was not changed in any manner after NASA became aware of this individual's death, Base Maintenance cannot be said to have been penalized or have suffered prejudice on this account during evaluation. Further, we note that NASA received the revision at the very end of the evaluation and selection process, just 5 days before award, after nearly 4 months had elapsed. Given all of these circumstances, we cannot say that the contracting officer's decision not to consider Base Maintenance's revision was unreasonable or not in conformance with the applicable regulations. Accordingly, this aspect of the protest is summarily denied.

The protest is summarily denied in part and dismissed in part.

for 
Comptroller General
of the United States