



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Educational Media, Inc.
File: B-225457.2
Date: May 12, 1987

DIGEST

1. Protest of consideration of alternate offer is timely where filed within 10 working days of notice to protester that contract would be awarded on basis of alternate.
2. Protest of agency intent to accept alternate offer under solicitation for language laboratory equipment is without merit where alternate offer amounts to a choice of less expensive desks, and both desk styles comply with the specifications; government may accept alternate products that meet specifications even where solicitation does not provide for offers of alternate equipment.
3. Protest against inclusion of new evaluation criteria incorporated into solicitation by amendment is untimely where not filed prior to next closing date for receipt of proposals as required by Bid Protest Regulations.

DECISION

Educational Media, Inc. (EMI), protests the Department of the Air Force's award of a contract to Gel Systems, Inc., under request for proposals (RFP) No. F41800-86-R-0198. We deny the protest in part and we dismiss it in part.

The Air Force issued this RFP as a total small business set-aside for language laboratory equipment for the Defense Language Institute at Lackland Air Force Base, Texas. The original closing date was August 11, 1986. The RFP described the required equipment and furniture in both design and functional terms, depending on the complexity of the particular item, and provided for award of the contract to the offeror presenting the lowest priced, technically acceptable offer. Both Gel and EMI submitted offers.

After best and final offers (BAFO's), the Air Force concluded that EMI had submitted the lowest cost, acceptable offer and advised Gel by letter of the agency's intent to

award the contract to EMI. Gel then protested to our Office that the Air Force had not properly evaluated a lower priced, alternate offer included in Gel's proposal. In examining this matter, the Air Force determined that Gel's alternate offer in fact had not been evaluated, that the Air Force had improperly conducted discussions with EMI after BAFO's without affording Gel a similar opportunity, and that the evaluation criteria were not appropriate for the acquisition of a system this complex. The Air Force therefore decided to amend the solicitation and conduct another round of BAFO's. Gel withdrew its protest.

Gel and EMI responded to the second request for BAFO's. The Air Force determined that Gel's alternate offer was the lowest priced acceptable proposal and advised EMI on January 20, 1987, that the contract would be awarded to Gel. EMI filed this protest on February 12, after learning, on January 29, that Gel had been selected on the basis of an alternate proposal.

EMI states that the RFP did not explicitly provide for alternate offers, and contends that the Air Force's consideration of Gel's alternate offer therefore was improper. EMI also argues that, to the extent Gel's alternate offer may have involved a deviation from the specifications, the Air Force was obligated to afford EMI an opportunity to respond to the changed requirements. EMI also challenges the propriety of the new evaluation criteria included in the final amendment to the solicitation.

Preliminarily, the Air Force and Gel contend that EMI's protest is untimely because it was not filed within 10 working days of notice to EMI of the Air Force's proposed award of the contract to Gel. In this respect, our Bid Protest Regulations require that protests, other than those against improprieties in a solicitation, be filed within 10 working days after the protester knew or should have known the basis of its protest. 4 C.F.R. § 21.2(a)(2) (1986).

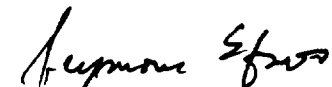
The protest is founded on EMI's objection to the Air Force's consideration of Gel's alternate proposal, and there is nothing in the Air Force's notice to EMI of the impending award that might have apprised EMI of this fact. EMI's protest, filed on the 10th working day after receiving advice that the Air Force intended to award the contract on the basis of Gel's alternate offer, therefore is timely.

EMI's protest is without merit, however. The government may accept an alternate offer that meets the requirements of the solicitation even though the solicitation does not provide for alternate proposals. L. B. Foster Co., B-222593, Aug. 18, 1986, 86-2 C.P.D. ¶ 191. Although EMI asserts

otherwise, the agency found, and we cannot disagree based on our in camera review of Gel's proposal, that Gel's alternate offer satisfied the specifications. The alternate offer amounted to a choice between two types of student desks, with the base bid including a style Gel believed was favored by the end user, and the alternative being a less expensive style. The specifications in the RFP for these items were very general--the required sound absorbing material, for instance, was described as "carpeting, or equivalent"--and Gel specified in its proposal precisely how the less expensive desks would satisfy the requirements. The Air Force evaluated the alternative desks and obviously agreed that they were consistent with the specifications, and since Gel's alternate offer did not take exception to any RFP requirements, there was nothing improper in the Air Force's choosing to accept it.

EMI's challenge to the new evaluation criteria included in the final amendment to the RFP concerns an alleged impropriety incorporated into the RFP. Our regulations require that protests of this nature be filed before the next closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1). As EMI did not raise this objection until well after the closing date for the second round of BAFO's, this objection is untimely and will not be considered.

The protest is denied in part and dismissed in part.

for 
Harry R. Van Cleve
General Counsel