



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Bionetics Corporation, Mercury
Consolidated Division
File: B-230646.2
Date: June 13, 1988

DIGEST

Protest that solicitation requirement for a cost realism evaluation of proposals solicited for cost comparison purposes deviates from Office of Management and Budget Circular A-76 cost comparison procedures is dismissed since it involves alleged deviation from executive branch policy which is not for consideration under General Accounting Office bid protest function.

DECISION

The Bionetics Corporation, Mercury Consolidated Division, protests the selection criteria for a cost comparison pursuant to Office of Management and Budget (OMB) Circular A-76 under request for proposals (RFP) No. DABT59-86-R-0007 issued by the Department of the Army, Fort Lee, Virginia. The proposed contract would be for a cost-plus-fixed-fee contract. We dismiss the protest.

The Army issued the RFP in April 1986. After discussions and submission of best and final offers (BAFOs), the Army conducted an A-76 cost comparison of the low evaluated offeror's costs to the government's estimated cost. On July 8, 1987, the agency determined that the solicitation work should be kept in-house as the government's estimated cost was lower than the costs proposed by the low offeror. However, the Army decided to reopen discussions and, by letter dated November 18, requested offerors to revise their BAFOs as necessary. The Army is currently evaluating these revised BAFOs and the Fort Lee Directorate of Contracting has informed our Office that these evaluations should be completed sometime in late June.

Bionetics filed this protest with our Office on May 18, 1988, maintaining that the government is not justified in selecting for either cost comparison or award any offeror other than the contractor whose minimally acceptable offer is the lowest in cost. Bionetics contends that OMB Circular A-76 requires the agency to compare its estimated cost with that of the contractor offering the lowest negotiated cost

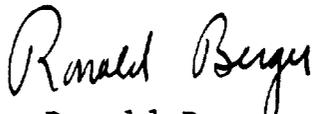
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after BAFOs. Bionetics protests that the RFP here, by requiring a cost realism analysis before the cost comparison is conducted, is contrary to OMB Circular A-76 because the lowest overall cost offeror after a cost realism analysis may be different from the lowest cost offeror based on unevaluated cost.

Where an agency notifies offerors in a solicitation of the cost comparison procedures it intends to use in determining whether it will or will not award a contract, we will review an allegation that the agency did not follow the guidelines it established. Rice Services Ltd., B-227119, July 28, 1987, 87-2 CPD ¶ 102. However, the guidelines chosen by the agency to conduct a cost comparison involve executive branch policy, challenges to which are not considered under our bid protest function. Id. Thus, the allegation that the RFP cost realism provision is inconsistent with the Circular does not represent a matter subject to our bid protest decision function.

Moreover, since Bionetics' concern is with the propriety of the RFP award selection criteria in light of the A-76 cost comparison guidance, it should have filed a protest prior to the closing date for receipt of initial proposals, which occurred more than a year ago, as our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988), require that improprieties apparent from the face of a solicitation be protested before the closing date for submission of proposals. Accordingly, even if this were a matter within the scope of our review, it would be untimely raised.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel