



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Discount Machinery & Equipment, Inc.
File: B-231068
Date: June 24, 1988

DIGEST

1. An agency properly may amend a solicitation to relax a requirement and the General Accounting Office will not question an agency's decision to use less restrictive specifications unless there is evidence of favoritism, fraud, or intentional misconduct by agency officials.
2. An allegation raised for the first time in a protester's comments to the agency report is untimely, and will not be considered, where the allegation is not based on new information and is not a mere expansion of the original protest.

DECISION

Discount Machinery & Equipment, Inc., protests the issuance of amendment No. 0001 to the Defense General Supply Center's (DGSC) solicitation No. DLA400-88-R-0005, for 56 drill grinding machines. We dismiss the protest in part and deny it in part.

DGSC issued the solicitation on November 3, 1987. Discount's proposal was one of five received by the December 3 closing date. During the evaluation of proposals, the technical branch advised the contracting officer that the Acquisition Item Description (AID) contained in the solicitation should be changed to remove the requirement for a cup type grinding wheel, thereby relaxing the specifications. The technical branch submitted a new AID to the DGSC contracting officer reflecting this change. Consequently, DGSC issued amendment No. 0001 to the solicitation to reflect this change in requirements and to extend the closing date for receipt of proposals until May 13, 1988.

On April 18, 1988, Discount's protest was received by GAO and DGSC. The protest was amended by telephone on April 19 because Discount had listed the wrong solicitation number in

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its original protest letter. GAO advised the agency of this change by our standard notice of protest on April 19 and by telephone on May 2. DGSC's report was prepared in response to the amended protest.

Discount contends that it proposed an acceptable machine (previously furnished to the agency in 1985), and that the solicitation should not have been amended, but that the agency should have made an award on the basis of initial proposals to the low offeror. Discount states that each offeror has already had an equal opportunity to submit a proposal, and that by allowing offerors to submit revised proposals based on the amended solicitation, the government is holding an auction.

DGSC states that the Federal Acquisition Regulation (FAR), section 15.606(a) (FAC 84-16), required the agency to issue the amendment because the government had relaxed its requirements. Additionally, the amendment was issued to ensure that all offerors had identical statements of the agency's requirements and to provide a common basis for submission of proposals in response to the relaxed requirements.^{1/}

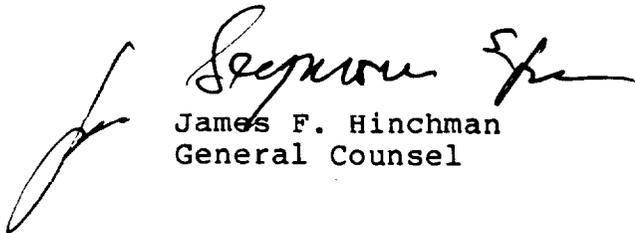
The FAR permits agencies to make an award on the basis of initial proposals under certain conditions. However, an agency may choose to hold discussions if it believes that would be in the government's best interests to do so. See FAR § 15.610 (FAC 84-16). The decision to award on the basis of initial proposals, however, is discretionary. Kisco Company, Inc., B-216953, Mar. 22, 1985, 85-1 CPD ¶ 334. Further, where, as here, an agency relaxes the requirements of a solicitation, the contracting officer is

^{1/} DGSC also contends that the protest should be dismissed because Discount failed to comply with section 21.1(d), Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1988), which requires the protester to provide a copy of the protest to the contracting officer no later than 1 day after the protest is filed with our Office. DGSC argues that Discount, as of May 16, had not notified it either orally or in writing of the amendment to its protest. In this case, however, we do not find that dismissal of the protest is required. Although DGSC may not have timely received notification of the amendment from Discount, DGSC had actual knowledge of the grounds of the protest as amended, and filed its protest report in a timely manner. Thus, DGSC was not prejudiced by Discount's noncompliance. See 4 C.F.R. § 21.1(f).

required to issue a written amendment to the solicitation and notify the offerors. FAR §§ 15.606(a), and (b). Moreover, our Office, will not question an agency's use of less restrictive specifications unless there is evidence of favoritism, a showing of fraud or intentional misconduct by the government. Davey Compressor Co., B-203781.2, May 10, 1982, 82-1 CPD ¶ 444. In this case there is no indication of favoritism, fraud or misconduct. Rather, the record shows that the motivation for the amendment is to have the solicitation reflect the revised minimum needs of the government. We therefore find no merit to this ground of protest.

In its comments on the agency report, Discount raises for the first time the allegation that the government, by amending the solicitation, is in reality holding an auction. This allegation is not based on new information obtained after the filing of the original protest. Our Bid Protest Regulations require that protests involving an allegation such as this be filed no later than 10 working days after the basis of the protest was or should have been known. 4 C.F.R. § 21.2(a)(2); see Dayton T. Brown, Inc., B-223774.3, Dec. 4, 1986, 86-2 CPD ¶ 642. This allegation is therefore untimely and will not be considered.

We dismiss the protest in part and deny it in part.



James F. Hinchman
General Counsel