



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: GE American Communications, Inc.

File: B-232001

Date: July 25, 1988

DIGEST

Protest that agency did not consider alleged cost savings accruing from protester's offer to waive termination costs otherwise due under predecessor contract is dismissed where solicitation did not provide for consideration of such cost savings and protester did not file initial protest until after the contract was awarded.

DECISION

GE American Communications, Inc. (GEAC), protests the award of contract No. Ay 15Jul87 0169A, for satellite communication service, to Contel ASC, under a solicitation issued by the Defense Communication Agency (DCA). GEAC contends that its proposal offered the lowest overall cost to the government if the agency had evaluated GEAC's offer to waive termination costs otherwise due under GEAC's predecessor contract for the same services.

We dismiss the protest.

GEAC is currently providing the services in question under a contract which commenced in March 1984, at a monthly service rate of \$22,000, with a basic termination liability (BTL) of \$594,000, which reduces by \$9,900 per month of performance. The current solicitation was issued in August 1987, and did not include as an evaluation factor any calculation of BTL costs under the existing contract. Award under the current solicitation was made to Contel as the lowest cost offeror based on its offer of a service rate of \$3,300 per month, with a BTL of \$72,746. GEAC submitted an offer of a service rate of \$4,600 per month, with a BTL of \$276,000. GEAC also proposed to waive its BTL costs under the predecessor contract if it received the current award.

GEAC contends that DCA failed to evaluate its offer to waive the BTL costs to which it will be entitled under the existing contract, and that acceptance of its offer would save the government approximately \$100,000, depending on the

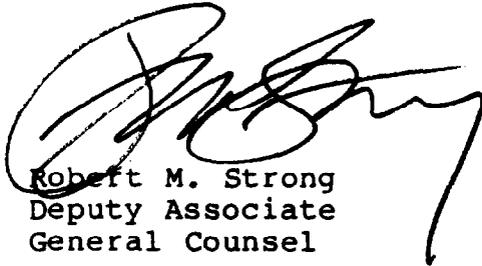
0-42799

exact date of termination. GEAC contends that consideration of these savings would result in its proposal offering the lowest overall cost to the government. GEAC first raised this allegation in a protest to the agency which it filed on May 13, 1988, after the contract had been awarded to Contel. The agency denied GEAC's protest on July 7, 1988, whereupon GEAC protested to our Office.

We have specifically held that because an agency may not apply unstated evaluation factors in evaluating offers, in order to consider the cost savings associated with the waiver of termination costs, such cost savings would have to be included in the solicitation as an evaluation factor. Sargent Controls, B-224313.3, Jan. 14, 1988, 88-1 CPD ¶ 32. Here, the solicitation did not provide for evaluation of termination costs, thus, the agency properly declined to evaluate the savings associated with GEAC's proposed BTL waiver.

If GEAC wished to protest the failure of DCA to include evaluation of termination costs as a solicitation factor, an alleged solicitation impropriety, under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988), it was required to do so prior to the closing date for receipt of proposals. Since GEAC's initial protest to the agency was untimely filed after award had been made, GEAC's subsequent protest in this regard to our Office is also untimely, and is not for consideration on the merits. 4 C.F.R. § 21.2(a)(3).

The protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel