The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: E&S Computer Sales, Inc.

File: B-233608

Date: December 2, 1988

DIGEST

1. Protest that solicitation was improper because it was for a requirement that should have been satisfied through another contract is untimely when not filed prior to the closing date for receipt of initial proposals.

2. Protest that agency should reopen discussions to allow offeror to shorten its proposal's extended delivery schedule, which was in conflict with the solicitation, is dismissed for failure to state a valid basis for protest since agency is not required to reopen discussions to afford offeror yet another chance to correct its proposal.

DECISION

E&S Computer Sales, Inc., protests the rejection of its proposal and the award of a contract to Plus III Software, Inc., under request for proposals (RFP) No. R8-88-18 issued by the United States Forest Service, Department of Agriculture, for surveying software.

We dismiss the protest without obtaining an agency report.

As a software subcontractor under the Department of Agriculture's Microcomputer Productivity System (AMPS) prime contract with Electronic Data Systems, E&S argues that it has already developed software that, although not fully complying with all the requirements of the RFP, could be modified to do so. Despite its view that this requirement could and should have been satisfied through the AMPS contract, E&S did submit a proposal in response to this RFP and was included in the competitive range and considered for award.

However, following a demonstration of E&S' software to the Forest Service and discussions in which the Forest Service pointed out deficiencies it perceived in the software, E&S

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submitted a best and final offer (BAFO) that included a delivery schedule of "within four weeks of award." This was different from the delivery schedule included in E&S' initial proposal, which had been in conformance with the RFP, and in clear conflict with the RFP's required delivery schedule of "within 15 calendar days of contract award." As a result, E&S' BAFO was rejected.

To the extent E&S protests that this solicitation should not have been issued because it was for a requirement which must be satisfied through the AMPS contract, it concerns an alleged solicitation impropriety that was apparent from the face of the solicitation. A synopsis of this requirement was published in the Commerce Business Daily (CBD) on April 25. We have held that publication of a procurement in the CBD constitutes constructive notice to potential offerors of the solicitation and its contents. Aluminum Co. of America, B-227139, July 21, 1987, 87-2 CPD ¶ 72. Further, E&S had actual notice of this solicitation since it did submit an initial proposal prior to the closing date for receipt of proposals of July 29. Therefore, in order for this alleged solicitation impropriety to be timely under our Bid Protest Regulations, and for consideration on the merits, it was required to have been raised by E&S in a protest filed prior to the July 29 closing date for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (1988).

E&S did not raise this alleged solicitation impropriety until it filed an agency-level protest on October 18, after it had been notified of the award to Plus III Software. Since E&S' October 18 protest to the Forest Service concerning this allegation was untimely, we will not consider the merits of this basis of the protest to our Office.

As for E&S' allegation that it should be allowed to shorten the extended delivery schedule included in its BAFO, the Forest Service was not required to reopen discussions to afford E&S yet another chance to correct its proposal. See, e.g., AZTEK, B-229525, Mar. 2, 1988, 88-1 CPD ¶ 218. In addition, it is fundamental that an offeror has an obligation to submit a proposal which fully complies with the terms and conditions of the solicitation and runs the risk of having its proposal rejected if it fails to do so. This is especially true where, as here, the RFP specifically warned that offerors who propose a delivery schedule

different from that required in the RFP would have their proposals rejected. Accordingly, we dismiss this allegation for failure to state a valid basis for protest. 4 C.F.R. § 21.3(m).

The protest is dismissed.

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