



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Automated Data Management, Inc.

File: B-234549

Date: March 2, 1989

DIGEST

1. Protest grounds based upon alleged solicitation improprieties--use of request for quotations for procurement of services valued at greater than \$25,000 instead of placing delivery order under existing contract--are untimely when not raised prior to closing date for receipt of quotations.
2. Protest of contracting agency's alleged failure to synopsize requirement in Commerce Business Daily and limitation of competition to 3 offerors is untimely when raised more than 10 days after protester was aware or should have been aware of these grounds.
3. Whether to conduct a preaward survey is a matter within the contracting officer's broad discretion and the allegations that no survey or proper determination of responsibility were made of awardee, are not sufficient as bases for protest.
4. Submission and acceptance of below cost offers are not legally objectionable. Whether an offeror can meet contract requirements in light of its low offer concerns the agency's affirmative responsibility determination which the General Accounting Office generally does not review.

DECISION

Automated Data Management, Inc., protests request for quotations (RFQ) No. DAJA37-89-Q-0120, issued by the Army Contracting Command, Europe, and the resulting award to the Business Systems Division, Harris Corporation, for the provision of microcomputer training services. Automated contends that the requirement should have been fulfilled pursuant to its existing contract, DAHC26-85-D-0006, awarded under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982).

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We dismiss the protest without requiring an agency report on the matter. Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1988).

In September 1988, the Army exercised an option to extend Automated's contract through fiscal year 1989. Of the many anticipated requirements considered in the decision whether to exercise the option was one for 48 weeks of on site training at the Army's First Armored Division (FAD) in Germany. The FAD submitted a purchase request for these services in October 1988, and after a legal review, a delivery order against Automated's contract was issued on January 12, 1989. At the Army's request, Automated provided employees on January 17 to perform the training.

Also on January 17, the Army modified the delivery order by terminating it for the convenience of the government. Automated was orally advised that the delivery order had been issued by mistake and that a competitive procurement was being considered.

On January 20, Automated was one of three invited concerns who attended a conference at which the RFQ and a statement of work were distributed and questions were taken. Automated representatives "insisted that each offeror's responsibility be evaluated" and subsequent clarifications of the statement of work "assured" prospective offerors that a pre-award survey would be conducted to verify the capability to perform. The Army informally advises us that the closing date for receipt of initial quotations was January 31.

Automated submitted a quotation on January 31, but was not contacted for a pre-award survey. On February 8, Automated was notified of the award to Harris-Lanier and filed its protest with our Office on February 17.

Automated raises nine grounds of protest, most of which we find to be untimely, and the remainder otherwise not for consideration under our Bid Protest Regulations.

Automated first alleges that the decision to remove this requirement from its existing 8(a) contract, allegedly without proper authority, and the decision to award the contract to a large business, respectively violate Federal Acquisition Regulations (FAR) §§ 19.505 and 19.501(g) (FAC 84-40). Further, Automated contends that the value of the requirement far exceeds the \$25,000 limit for small purchase procedures under FAR §§ 13.107 and 13.108 (FAC 84-29) and that the Army, upon receiving quotes, the lowest of which

was \$81,600, should have proceeded to issue a competitive solicitation. Automated also protests the failure to synopsise the requirement in the Commerce Business Daily (CBD), in violation of FAR § 5.201 (FAC 84-38), and the alleged restriction of competition to only three offerors, in violation of FAR § 6.001 (FAC 84-38) and § 6.303 (FAC 84-23).

Protests based upon alleged improprieties in a solicitation, which are apparent prior to the closing date for receipt of initial quotations must be filed in our Office prior to that date. 4 C.F.R. § 21.2(a). Similarly, a protest must be filed within 10 working days of when a protester was, or should have been aware of the bases for protest. 4 C.F.R. § 21.2(b). Since Automated was or should have been aware of the apparent solicitation defects^{1/} before the closing date of January 31, and was aware or should have been aware of the remaining matters (CBD publication and number of competitors) at the time of the January 20 conference, these protest bases are untimely and will not be considered by our Office. See Workshops for Retarded Citizens, Inc., B-216788, Oct. 29, 1984, 84-2 CPD ¶ 476.

Automated next alleges "on information and belief" that the terms of the RFQ were violated because no pre-award survey was conducted or determination of contractor responsibility made. Automated has submitted no evidence to support these allegations. As such, its protest on this ground amounts to mere speculation, which is insufficient alone to provide the basis for sustaining a protest. Independent Metal Strap Co., Inc., B-231756, Sept. 21, 1988, 88-2 CPD ¶ 275. In any event, the contracting officer has broad discretion as to whether a pre-award survey should be conducted. Fund for Equal Access to Society, B-228167, Jan. 20, 1988, 88-1 CPD ¶ 54. Further, under FAR § 9.106-1 (FAC 84-25), an agency is not required to conduct such a survey if the information on hand or readily available is sufficient to allow the contracting officer to make a determination of responsibility. Thus, even the failure to conduct a pre-award

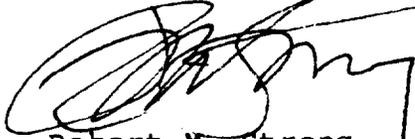
^{1/} We recognize that Automated could not have been aware that the lowest offer would be more than \$25,000. However, in view of its recognition that the value of the required services exceeded \$25,000, its belief (see infra) that \$81,600 represents a "buy-in" quotation, and the fact that its own offer apparently was considerably greater than \$25,000, it was incumbent upon the protester to raise this basis of protest before the closing date.

survey is insufficient to establish any impropriety on the agency's part.

Automated also alleges that Harris, through its \$81,600 quote, has sought to "buy in" to this procurement and that the contracting officer failed to consider this matter. However, submission and acceptance of below cost offers are not legally objectionable. Whether a potential contractor can meet contract requirements in light of its low offer concerns the contracting agency's affirmative responsibility determination which our Office generally does not review. See Applied Controls Co., Inc.--Request for Reconsideration, B-228568.2, Nov. 30, 1987, 87-2 CPD ¶ 528.

Finally, Automated claims that it submitted its quotation without protest in the belief that the purpose of the RFQ was, in essence, a market survey. See FAR § 15.402(e) (FAC 84-37). However, it appears that any such belief was unreasonable under the circumstances here. Automated was aware that a delivery order under its contract had been terminated for the government's convenience and that the requirement was being resolicited pursuant to an RFQ. Automated attended a preproposal conference at which the statement of work and the RFQ were distributed and it submitted a quotation by the closing date. Thus, it is evident that the RFQ was more than a mere market survey, and Automated should have been aware of that fact.

Accordingly, the protest is dismissed.



Robert M. Strong
Associate General Counsel