



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Keegan Machine & Fabricating, Inc.
File: B-233971
Date: April 26, 1989

DIGEST

1. Protest that agency's disclosure of its price goals amounted to the use of an impermissible auction technique is untimely, and will not be considered where it is not filed within 10 days after the protester learned the protest basis.
2. Assertion that awardee was improperly found to be responsible because it made false statements is without merit where assertion is based on a telephone conversation memorandum which, the record establishes, does not accurately reflect the conversation.

DECISION

Keegan Machine & Fabricating, Inc., protests the award of a contract to Argencord Machine Corp. under request for proposals (RFP) No. DLA500-88-R-0346, issued by the Defense Industrial Supply Center, Defense Logistics Agency. Keegan alleges that during negotiations agency contract personnel improperly indicated a price that Keegan had to meet to obtain further consideration for the award. Keegan further alleges based on the agency's protest report that the awardee made false statements to the agency concerning its experience in producing an item similar to those which are the subject of the RFP.

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

The solicitation requested offers on two types of plain rod end bearings for use in Sikorsky helicopters, and provided for submission of a first article test sample for each item. Seven offers were received; three of these were subsequently determined to be technically acceptable and within the competitive range. Argencord's offer of \$98.99 each for both items was low; Keegan's offer of \$103.08 and \$104.78 for the items was next low.

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On September 29, 1988, the agency's buyer contacted Argencord and Keegan to determine if either had ever manufactured the items covered by the RFP. Later, on November 3, the contracting officer contacted Argencord and discussed the possibility of waiving first article testing for that firm.

The agency buyer then opened formal discussions with Argencord, Keegan, and the other offeror within the competitive range.^{1/} As a result, Argencord responded with a revised price of \$97.57 each for both items, and Keegan responded with prices of \$101.08 and \$102.78 for each item.

On November 9, the offerors were contacted for further negotiations, and according to the agency report they were told that based on the price previously paid to Sikorsky Aircraft for the items and on the agency's price analysis, the agency felt it should be paying under \$90 per item for each of the two items. Best and final offers (BAFOs) were also requested. Argencord submitted a BAFO of \$87.50 each for both items, and Keegan submitted a BAFO of \$89.79 and \$90.69 per item. Argencord was awarded the contract as the low offeror on December 14. Keegan filed its protest with this Office on December 23.

Keegan argues that the agency's actions during negotiations were tantamount to an auction, because, according to the protester, the agency representative told it on November 9 that its offer had to be under \$90 to be considered for award. We find this argument to be untimely raised because Keegan knew as of November 9 of its basis of protest. Our Bid Protest Regulations require that protests shall be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). Keegan should have protested the agency's action within 10 working days of November 9. As Keegan did not file its protest until December 23, after the award was made, we find Keegan's protest on this issue untimely. See The B.F. Goodrich Co., B-230674, May 18, 1988, 88-1 CPD ¶ 471.

Keegan argues that if its protest is untimely, we should consider it under 4 C.F.R. § 21.2(b), which states that an untimely protest may be considered where the protest raises issues significant to the procurement system. The significant issue exception to our timeliness rules will be invoked only where the subject matter of the protest is of

^{1/} Since the other offeror is not relevant to this protest its offer will not be discussed.

widespread interest or importance to the procurement community, and involves a matter which has not been considered on the merits in a previous decision of this Office. Caldwell Consulting Assocs., B-222583.2, Dec. 4, 1986, 86-2 CPD ¶ 641. We do not think this protest meets that standard. Accordingly, we decline to consider the issue.

Keegan next argues that Argencord is not a responsible offeror because it made false statements during a conversation with the agency representative. Upon receiving the agency protest report, Keegan found a memorandum of the telephone conversation held between Argencord and the agency on October 3, in which the possibility of waiver of first article testing was discussed. According to the memorandum, Argencord stated that it was working for Sikorsky as a subcontractor under Navy contract No. N00383-89-C-8210, for one of the items contained in the solicitation. Keegan states that Argencord has not been working as a subcontractor for Sikorsky and that because of Argencord's statement to the contrary, Argencord lacks the satisfactory record of business ethics required for a prospective contractor to be determined responsible.

The agency reports that Argencord had not indicated in the October 3 telephone conversation that it was a subcontractor for Sikorsky. The agency states that the author of the October 3 telephone memorandum made an error and that he intended to state that Argencord had advised him that it was working on a similar assembly as the prime contractor under Aviation Supply Office (ASO) contract No. N00383-89-C-8210. Additionally, the agency has presented evidence that Argencord has been approved as an acceptable source for production of the items covered by the solicitation since 1986, and it states that it has verified the existence of the ASO contract. Keegan, while given the opportunity, has made no effort to rebut the agency's response.

Since the agency has provided a reasonable explanation for the memorandum, and the protester has not responded, we see no reason to consider this matter further.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel