



The Comptroller General
of the United States

Washington, D.C. 20548

Lebowitz

Decision

Matter of: S.T. Research Corporation--Reconsideration

File: B-235478.2

Date: June 23, 1989

DIGEST

Prior dismissal of protest is affirmed on reconsideration where protest that a series of reductions in the required level of effort and estimated number of labor hours under the solicitation favored the incumbent is filed more than 10 working days after the basis of protest is known, or should have been known, and the protester knowingly participated in the procurement process despite the stated reductions in the required labor effort.

DECISION

S.T. Research Corporation (STRC) requests that we reconsider our prior dismissal of its protest as untimely. STRC initially protested that the Department of the Navy reduced the scope of effort and the estimated number of labor hours under request for proposals (RFP) No. N00189-87-R-0145, for the supply of technical and engineering services for electronic support systems, in order to manipulate the evaluation process in favor of the incumbent contractor.

We affirm our dismissal.

The RFP, issued in May 1988, requested the submission of technical and price proposals for 21 categories of labor over a 5-year time period. Estimated labor hours for those categories under this initial RFP ranged from 472,500 hours to 708,575 hours. The RFP evaluation criteria weighted technical 1-1/2 times greater than price, and the Navy reserved the right to award the contract to other than the low offeror.

Between January and April 1989, STRC submitted an initial technical and price proposal, and two revised proposals based on subsequent discussions and clarification requests. On April 10, following more discussions, the Navy requested the submission of best and final offers (BAFOs). At this time, the Navy issued Amendment No. 0005, which reduced the

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scope of effort from 5 years to 3 years and reduced by 23,592 hours the estimated number of labor hours in categories in which STRC claims it had a cost advantage. STRC submitted its BAFO on April 14. On April 21, 11 days after BAFOs were first requested, the Navy requested another round of BAFOs. Included with this BAFO request was a revised schedule showing a further reduction in the number of labor hours by 79,689 hours. STRC submitted its BAFO on April 25. On May 1, the Navy awarded the contract to ARGOSystems Incorporated, the incumbent contractor, at a higher evaluated price than STRC's price.

On May 10, STRC filed its protest with our Office. STRC essentially protested the continual reductions in the scope of the RFP as favoring the incumbent. By notice of May 11, we dismissed STRC's protest as untimely because it was not filed within 10 working days of the date the basis for protest was known or should have been known, as required by 4 C.F.R. § 21.2(a)(2) (1988).

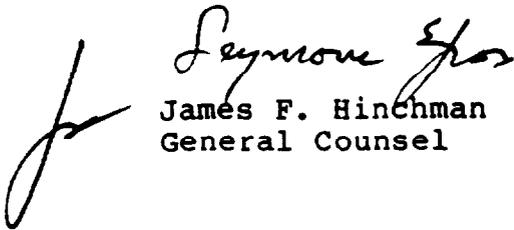
STRC essentially argues that its protest was timely filed because it did not realize until ARGOSystems received the award at a higher price that the Navy manipulated the evaluation process by reducing the scope of effort and estimated labor hours to unfairly favor the incumbent contractor, which held a technical advantage.

Beginning with the issuance of the amendment on April 10 which reduced the scope of the work, and followed by the issuance on April 21 of another amendment which revised the schedule, a series of reductions in the required scope of effort and estimated labor hours occurred. To the extent STRC is protesting the amendments which reduced the RFP's scope of work, its protest is untimely. Our Bid Protest Regulations provide that a protest based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1988). Alleged improprieties, such as those involved here, which do not exist in the solicitation as issued initially, but which are subsequently incorporated into the solicitation by amendment, must be protested no later than the next closing date for receipt of proposals following the incorporation. Id.; Interstate Diesel Services, Inc., B-232668.2, Oct. 28, 1988, 88-2 CPD ¶ 408.

Further, although STRC asserts that it was unaware until the award was made to ARGOSystems that the agency's actions in reducing the scope of work favored ARGOSystems, we note that the protester stated in its original protest letter to our

Office that it knew "[f]rom the beginning the solicitation structure was strongly biased in favor of the incumbent contractor." Thus, STRC either knew, or giving the protester the benefit of the doubt, should reasonably have known, of its basis for protest--that the agency's actions allegedly were favoring the incumbent--no later than April 21, when the scope of work was again reduced. It thus had 10 working days from that date, or until May 5, to protest the agency's actions to our Office. 4 C.F.R. § 21.2(a)(2). STRC, however, did not file its protest with our Office until May 10, the 13th working day after it knew, or should have known, of its basis for protest. Furthermore, STRC knowingly participated in this procurement despite the stated reductions in the required labor effort and its awareness of the effect of these reductions on its ability to be competitive. STRC did not protest these reductions until after the award to ARGOSystems. A firm which knowingly participates under the terms of the solicitation without objection may not wait until it loses the competition to challenge these terms.^{1/} See AMBAC International, B-234281, May 23, 1989, 89-1 CPD ¶ ____.

Our prior dismissal is affirmed.



James F. Hinchman
General Counsel

^{1/} STRC also protests that because the subsequent request for BAFOs came just 11 days after the first request for BAFOs, it did not have sufficient time to prepare its subsequent offer. However, this allegation is also untimely because STRC was required to protest the insufficient timeframe for submitting subsequent BAFOs no later than the date on which the subsequent BAFOs were due. 4 C.F.R. § 21.2(a)(1); Lane Roofing Co., Inc., B-232293, Sept. 1, 1988, 88-2 CPD ¶ 206.