



Curcio

Decision

Matter of: American Mutual Protective Bureau

File: B-234315.4

Date: July 12, 1989

DIGEST

1. Protest that solicitation is defective which was not filed until after bid opening date is dismissed as untimely.
2. Protest that low bid should be rejected as nonresponsive is dismissed as academic where the procuring agency in fact rejected the bid as nonresponsive.
3. Protest from a bidder which would not be in line for award if the protest were upheld is dismissed because the protester does not have the requisite direct economic interest required to be considered an interested party entitled to maintain the protest.

DECISION

American Mutual Protective Bureau protests the award of a contract to any other bidder under invitation for bids (IFB) No. IRS-W-88-021, issued by the Internal Revenue Service (IRS) for guard services.

We dismiss the protest.

The IFB called for bidders to provide security guard services at various locations in Fresno and Tulare, California, for a 4-month base period and four 1-year option periods. The IFB provided that the award would be made to the low responsive, responsible bidder based on the lowest aggregate total. As issued, the IFB contained a list of 19 locations for guard services, but noted that 2 of the locations, 15 and 16, were reserved for the contractor and did not require guard services. Subsequently, the IRS issued amendment No. 3 to the solicitation which in part deleted locations 15 and 16 from the list of locations at which guard services were required.

On April 18, 1989, the bid opening date, the IRS received five bids. The two low bidders, Trans West and H&H Service

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Corporation, were rejected as nonresponsive. The three remaining bids were submitted by Dean's Security Professionals (\$5,227,240); Akal Security Inc. (\$5,254,864.80); and American (\$5,472,478.20). The IRS awarded the contract to Dean's.

American protests that the solicitation was defective because amendment No. 3 erroneously omitted locations 15 and 16, two locations at which guard services were required; as a result, American argues that it was the only bidder who included the cost of providing services at these locations. American also protests that the original low bidder, Trans West, did not submit a bid bond and its bid therefore is nonresponsive. Finally, American complains that the three low bidders submitted materially unbalanced bids.

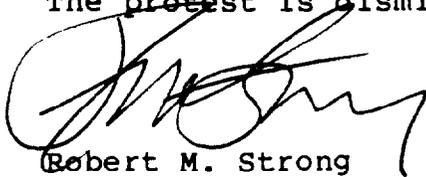
Under our Bid Protest Regulations, a protest based on an alleged impropriety in a solicitation must be filed before the date and time set for bid opening. 4 C.F.R. § 21.2(a)(1) (1988). Here, while bid opening was held on April 18, American did not file its protest that the solicitation was defective as the result of amendment No. 3 until April 28. Accordingly, this protest basis is untimely and will not be considered on the merits. Community Metal Prods., Corp., B-229628, Jan. 15, 1988, 88-1 CPD ¶ 41. In any case, the IRS reports, and our review of the IFB confirms, that no guard services were required at locations 15 and 16. Thus, there was no basis to include these locations in the IFB.

With respect to American's contention that Trans West, the low bidder, submitted a nonresponsive bid, since the IRS rejected the bid, Trans West is not in line for award. Consequently, we dismiss this protest basis as academic. Telex Communications, Inc., B-222760, June 25, 1986, 86-2 CPD ¶ 8.

Finally, we will not consider American's protest that the three low bidders submitted unbalanced bids. First, as noted above, the two low bidders were rejected as nonresponsive. Concerning American's challenge to the third low bid, to be eligible to pursue a protest, a protester must be an interested party within the definition of our Bid Protest Regulations, 4 C.F.R. § 21.1(a). A protester lacks standing as an interested party where it would not be in line for award if its protest were sustained. Professional Medical Prods., Inc., B-231743, July 1, 1988, 88-2 CPD ¶ 2. Here, even if we sustained American's protest, the fourth low bidder, not American, would be in line for award.

Accordingly, American is not an interested party to challenge the third low bidder's bid and this issue will not be considered on the merits. Id.

The protest is dismissed.

A handwritten signature in black ink, appearing to read "R. Strong", written over the typed name below.

Robert M. Strong
Associate General Counsel