



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** East, Inc.  
**File:** B-235687.2  
**Date:** December 26, 1989

### DIGEST

1. Protest that solicitation amendment that called for revised proposals and agency's subsequent request for a second round of best and final offers (BAFOs) resulted in an auction is untimely where protest was not filed until after the dates the revised proposals and BAFOs were due.

2. Fact that protester received higher score in the evaluation of its proposal under the solicitation before an amendment calling for revised proposals was issued and a lower score when its revised proposal was evaluated does not necessarily mean that the later evaluation was not in accordance with the evaluation criteria since the amendment was issued to correct deficiencies in the evaluation plan, the instructions to offerors and the evaluation factors. General Accounting Office finds no improprieties in the evaluation record.

### DECISION

East, Inc., protests the proposed award of a contract to Harris, Inc., under request for proposals (RFP) No. F08602-89-R-0021 issued by the Air Force for stocking, custodial and warehousing services for the MacDill Air Force Base commissary. The protester contends that the Air Force conducted an impermissible auction and improperly evaluated the proposals

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

The solicitation, a total small business set-aside, was originally issued on January 26, 1989. It provided for the award of a fixed-price contract to the responsible offeror whose offer was found "most advantageous" to the government. The RFP provided that proposals would be evaluated on the basis of technical factors and price in descending order of

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importance. The RFP listed several criteria under technical factors.

The Air Force received nine proposals, six of which were determined to be in the competitive range. After discussions and evaluation of best and final offers (BAFOs), East was selected for award. Madison Services, one of the unsuccessful offerors, then filed a protest with our Office against the proposed award. According to the Air Force, when it was reviewing the procurement in response to Madison's protest, it discovered that the evaluation factors and the proposal submission instructions in the RFP and the source selection plan used by the evaluators were not consistent. Specifically, the RFP listed 12 technical evaluation factors while the proposal submission instructions in the RFP required offerors to submit technical information in 13 areas, and the source selection plan used by the evaluators listed 13 technical areas to be scored. Additionally, the 12 evaluation factors in the RFP were not listed in any order of importance, although some were in fact more important than others.

The Air Force then issued Amendment 0005 to the solicitation to correct the defects and Madison subsequently withdrew its protest. The amendment added the missing factor of plans and management procedures to the RFP list of evaluation factors and expanded the narrative explanations of the factors in both the RFP and the source selection plan. The amendment called for revised proposals by June 29. The revised proposals were then scored and BAFOs were requested without further discussions. After evaluation of BAFOs, Harris' revised proposal was this time determined to be most advantageous to the government. East received written notice of the proposed award on August 18 and on August 25 filed a protest with our Office.

The protester objects to the award to Harris on several grounds. East first asserts that the request for revised proposals and the second round of BAFOs created an impermissible auction. The remaining protest issues rest on the protester's view that its proposal could not reasonably be displaced since the changes made to the RFP by the amendment were insubstantial.

Our Bid Protest Regulations provide that alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested before the next closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1989). The protester argues that its protest of the alleged auction is timely even though it was filed well after the June 29 due date for

revised proposals because the firm refrained from filing a protest when Amendment 0005 was first issued in reliance on misleading reassurances from the Air Force. According to East, the agency contracting official who telephoned about the amendment assured the protester that "the evaluation after the amendment would be based on the same evaluation criteria used on the first review" when in fact the Air Force tightened the scoring standards.

We fail to see the relevance of the contracting official's alleged statements concerning the evaluation of revised proposals to the timeliness of East's argument that an auction occurred. First, there is nothing in the record which indicates that the alleged statement was false. Second, and more important, whether or not the revised proposals were scored differently has nothing whatever to do with the occurrence of an alleged auction due to the solicitation of revised proposals. The protester's essential complaint is that its competitors were given an unfair advantage because they were permitted to improve their technical proposals and/or lower their prices because the agency solicited additional rounds of offers. Here, the protester knew at the latest on June 23, when it received a copy of the amendment, that the agency was requesting additional revised proposals and on August 1 that it was requesting another round of BAFOs. We simply do not understand why, if East objected to the solicitation of additional rounds of offers, it would refrain from protesting because of an alleged statement which has little or nothing to do with whether the additional rounds of proposals constituted an improper auction. Thus, we think that East's protest that the solicitation of these submissions created an auction, first raised with our Office on August 25, is untimely. See Space Applications Corp., B-233143.3, Sept. 21, 1989, 89-2 CPD ¶ 255.

East requests that, even if its protest on this issue is untimely, we consider it under the significant issue exception to our timeliness requirements. 4 C.F.R. § 21.2(b). The significant issue exception is limited to untimely protests where the issue raised is one of widespread interest to the procurement community that has not been considered on the merits in previous decisions. Valentec Kisco, Inc., B-234421, Mar. 9, 1989, 89-1 CPD ¶ 261. We see nothing significant about the alleged auction, a matter we have considered on numerous occasions. See, e.g., HLJ Management Group, Inc., B-225843.3, Oct. 20, 1988, 88-2 CPD ¶ 375; M. Rosenblatt & Sons, B-230026 et al., Apr. 26, 1988, 88-1 CPD ¶ 409.

East's next ground of protest is that the Air Force did not evaluate the revised proposals received in response to Amendment 0005 in accordance with the evaluation criteria in the solicitation. East contends that even though the solicitation provided that technical was significantly more important than price, the agency must have changed its emphasis and based its selection of Harris primarily upon price due to funding limitations. East argues that since its proposal was more highly rated than Harris' under the RFP before it was amended, and since the changes made by Amendment 0005 were not substantial, the agency's subsequent higher rating of Harris cannot be reasonably justified.

The Air Force responds that East's evaluation under the RFP before it was amended was irrelevant. According to the agency the primary reason for the issuance of Amendment 0005 was inconsistencies among the RFP's evaluation factors, its proposal submission instructions and the evaluation plan used by the evaluation panel in the initial selection. The agency argues that even though the basis for award did not change, nor the overall total percentage weight given to technical factors versus price, the proposal scores could easily change since the amendment expanded the evaluation plan used by the evaluators, notified offerors of a missing evaluation factor, indicated the order of importance of the factors and permitted the offerors to further refine or change their proposal submissions. The agency also reports that funding projections were never taken into consideration under the evaluation conducted prior to Amendment 0005 or after that amendment was issued.

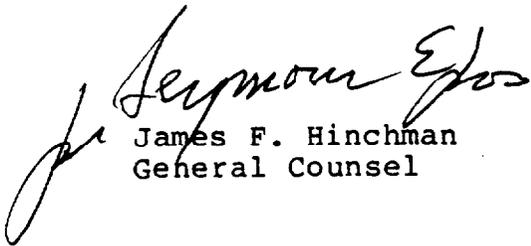
In reviewing protests like the one here against allegedly improper evaluations, our Office will not substitute its judgment for that of the contracting agency but will examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria listed in the solicitation. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. That the protester disagrees with the agency does not itself render the evaluation unreasonable. PECO Enters., Inc., B-232307, Oct. 27, 1988, 88-2 CPD ¶ 398.

The record shows that the agency conducted a new evaluation of the revised proposals submitted in response to the solicitation as changed by Amendment 0005. Under both the original evaluation and the later one East was found to be technically superior to Harris but to a lesser degree after the revised proposals were submitted. Harris, which under the original evaluation was rated second highest technically and the lowest priced, further lowered its price in its revised proposal to \$5,327,136. East submitted a final price of \$7,079,136. The revised source selection plan and the resulting change in the relative weights of the technical evaluation factors combined with Harris' lower price accounted for its overall higher score.

We see no evidence to support the protester's view that the agency's selection under the second evaluation was the result of overemphasizing price. The record shows that under both evaluations the Air Force weighted technical factors 60 percent and price factors 40 percent. Price was scored by the contracting officer using a formula that was not changed by Amendment 0005. We have carefully reviewed the evaluation record and we can find nothing improper in it. Nor do we find anything inherently irregular in the fact that after the receipt of revised proposals in response to an amended RFP that the ranking of rather closely rated offers could change.

Concerning East's belief that a change in funding improperly motivated the agency to emphasize price in the evaluation of revised proposals, there is no evidence in the record that the evaluators had access to price information and the agency repeatedly denies that this was the case. It appears from the record that the contracting officer was solely responsible for applying the mathematical formula to the offeror's price to arrive at the price score. Moreover, the contracting officer denies having any knowledge of funding allocations for this procurement. In any event, we have found that the emphasis on the technical factors remained constant throughout evaluation process.

The protest is denied.



James F. Hinchman  
General Counsel