



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DynCorp
File: B-240980.2
Date: October 17, 1990

Ruth Yudenfriend Morrel, Esq., for the protester.
Jeffrey I. Kessler, Esq., and Susan Leigh Mahone, Esq.,
Department of the Army, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Untimely protest of a solicitation's evaluation scheme will not be considered under the significant issue exception to the General Accounting Office (GAO) timeliness requirements where the issue raised in the protest has been considered on the merits by GAO in prior decisions and resolution of the issue would not be of widespread interest to the procurement community but only to the protester in this procurement. GAO will no longer invoke the significant issue exception solely because the record shows a violation of statute or regulation.

DECISION

DynCorp protests the award of a contract to Southern Aero Corporation under request for proposals (RFP) No. DAAJ09-89-R-0585, issued by the U.S. Army Aviation Systems Command, Department of the Army, for the maintenance, overhaul, and storage of UH-1H aircraft. DynCorp contends that the RFP evaluation scheme is defective, and that it would have received an award under a proper scheme.

We dismiss the protest as untimely.

The RFP contemplated the award of a fixed-price requirements contract for the maintenance, overhaul, and storage of UH-1H aircraft for a base year and 4 option years. The RFP stated that award would be made to the responsible offeror submitting

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the lowest priced, technically acceptable proposal and provided that the evaluated price would be determined by adding together the offeror's prices for all the contract line items. Southern Aero's evaluated price was \$25,364,342 and DynCorp's was \$25,649,490. The Army awarded a contract to Southern Aero on August 27, 1990.1/

DynCorp protests that award to Southern Aero will not result in the lowest "actual" cost to the government because the RFP evaluation scheme is defective. Specifically, DynCorp contends that the RFP provided in one line item for the transportation of 250 aircraft by truck to a government C-5 airfield and also provided in another line item for the transportation of the same 250 aircraft to a government C-141 airfield.2/ DynCorp argues that the aircraft will only be delivered to one of the airfields, not both, and that if the proposals were realistically evaluated, its evaluated price would be lower than Southern Aero's.3/

The Army contends that DynCorp's protest of the RFP evaluation scheme, filed after the closing date for receipt of proposals, concerns an apparent solicitation impropriety, which was required to be filed before the closing date for receipt of proposals under our Bid Protest Regulations, 4 C.F.R. § 21.2(a) (1990). The Army requests that we dismiss DynCorp's protest as untimely.

DynCorp states that the RFP evaluation scheme "is a clear error evident on the face of the solicitation" which can be easily remedied, and will result in significant costs to the

1/ COSTAR, a joint venture of JL Associates, Inc. and Tero Tek International, Inc., submitted the lowest evaluated price proposal but was determined to be nonresponsible, and the Small Business Administration denied COSTAR's request for a certificate of competency (COC). COSTAR has protested the nonresponsibility determination and denial of a COC to our Office (B-240980).

2/ The RFP also provided that where the aircraft could be flown away by the government there would be no transportation costs for those aircraft.

3/ It appears from the material submitted by the protester that DynCorp's evaluated price might be lower than Southern Aero's if only one of the transportation line items, or neither of the items, was included in the total evaluated price.

government if not corrected. DynCorp argues that we should consider the protest under the significant issue exception to our timeliness rules. See 4 C.F.R. § 21.2(b).

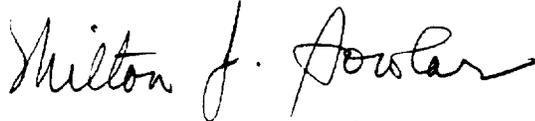
Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Lucas Place, Ltd.--Recon., B-238008.3, Sept. 4, 1990, 90-2 CPD ¶ _____. We may, in a given case, invoke the significant issue exception to our timeliness rules when, in our judgment, the circumstances of the case are such that our consideration of the protest would be in the interest of the procurement system. Golden North Van Lines, Inc., B-238874, July 17, 1990, 90-2 CPD ¶ 44, 69 Comp. Gen. _____. In order to prevent the timeliness requirements from becoming meaningless, we will strictly construe and seldom use the significant issue exception, limiting it to protests that raise issues of widespread interest to the procurement community, see, e.g., Golden North Van Lines, Inc., B-238874, supra, and which have not been considered on the merits in a previous decision. Keco Indus., Inc., B-238301, May 21, 1990, 90-1 CPD ¶ 490. The resolution of issues that only relate to the requirements and evaluation procedures of a single solicitation do not generally fall within the exception. See NFI Management Co., B-238522; B-238522.2, June 12, 1990, 90-1 CPD ¶ 548, 69 Comp. Gen. _____.

In our view, the issue of whether the evaluation scheme is defective and would result in the lowest overall cost to the government is not of sufficient interest to the procurement community to invoke the exception. We have numerous decisions which discuss the government's obligation to evaluate proposals under an evaluation scheme which would permit the accurate assessment of the probable cost of award and which provides for the lowest ultimate cost to the government. See Environmental Technologies Group, Inc., B-236813.2, Dec. 20, 1989, 89-2 CPD ¶ 573. Thus, while we recognize the importance of the matter to the protester, we do not regard DynCorp's protest, concerning the allegedly defective evaluation scheme in this single procurement, to be a significant issue under our Regulations.

DynCorp contends that several cases indicate that if the record establishes a clear violation of statute or regulation, we will invoke the significant issue exception. Reliable Trash Service Co. of MD, Inc., 68 Comp. Gen. 473 (1989), 89-1 CPD ¶ 535; Adrian Supply Co.--Recon., 66 Comp. Gen. 367 (1987), 87-1 CPD ¶ 357; and R.P. Densen Contractors, Inc., 66 Comp. Gen. 31 (1986), 86-2 CPD ¶ 401. In those cases, at the time it became evident to us that the protester

was untimely, the record clearly reflected a material error by the agency in the conduct of the procurement. In the interest of advancing the purpose of the rules governing the procurement system--to fairly and efficiently obtain the goods and services required by the federal government--we sustained the protests. We now believe that, in order to assure the perception that the timeliness rules are equitably enforced, the preferable approach is not to waive the timeliness rules, but to notify the agency of a possible violation by separate letter so that the agency may address the matter as appropriate. For that reason, we have notified the Army in this case that its evaluation scheme may have been defective, and decline to entertain DynCorp's untimely protest.

The protest is dismissed.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States