



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Teltara, Inc.

File: B-240888.2

Date: January 15, 1991

Ralph B. Wahlberg for the protester.
Terry Samuel for Scimco Building Service, Inc., an interested party.
Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.
Jeanne Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where protester initially alleges latent ambiguity in a solicitation without specifying what provision it believes is ambiguous, and then specifies for the first time in its comments on the agency report that the solicitation contains inaccurate area measurements for maintenance work, the specific argument is untimely and will not be considered.
2. Fact that disparate bid prices were received does not by itself establish existence of ambiguity or other solicitation defect warranting resolicitation.

DECISION

Teltara, Inc. protests the award of any contract under invitation for bids (IFB) No. DAKF36-90-B-0052, issued by the Department of the Army for custodial services for MEDDAC facilities at Fort Drum, New York. Teltara alleges that the IFB contained a latent ambiguity that led other bidders to misunderstand the area to be cleaned, thereby undermining the bidding process.

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

Of the 12 bids received, 11 ranged from \$1,125,090.86 to \$2,142,463 and the twelfth was \$15,273,627.82. The government estimate was \$2,190,480. Teltara, the incumbent contractor, submitted the sixth low bid at \$1,696,765.

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Teltara filed this protest with our Office on September 7. Award has been delayed pending resolution of the protest.^{1/}

In its initial protest submission, Teltara contended that the wide price range among the bids received, the fact that the low bid is less than one-half of the government estimate, and the fact that 11 of the 12 bids are lower than the government estimate all indicate that the bidders misunderstood the Army's requirement. Teltara concluded that the solicitation must contain a latent ambiguity, but did not indicate what provision it believes was ambiguous. In its comments on the agency report, Teltara argued for the first time that the alleged latent ambiguity in the solicitation consists of inaccurate area measurements of the floor space to be maintained, resulting in an understatement of the work requirement. Teltara maintains that, in calculating the area of floor surface space to be served, the government reduced the actual size to allow for interior wall space and other obstructions. The protester contends that this resulted in inaccurate figures and is contrary to industry practice.

Teltara's argument is untimely raised. A bid protest must set forth a detailed statement of the legal and factual grounds of protest. Bid Protest Regulations, 4 C.F.R. § 21.2(b)(4) (1990). Where a protester, in its initial protest submission, presents arguments in general terms and then, in its comments on the agency's report, for the first time details alleged procurement deficiencies, the detailed arguments will not be considered unless they independently satisfy the timeliness requirements under our Regulations. Astro-Med, Inc., B-232147.2, Nov. 1, 1988, 88-1 CPD ¶ 422. Protests of alleged procurement deficiencies other than apparent solicitation defects must be filed within 10 days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). Nowhere in its initial protest filing did Teltara assert that the estimated area in the IFB was inaccurate or, indeed, that the IFB contained any particular defect beyond an unspecified "ambiguity." Teltara argued in this general fashion--which prevented the agency from responding to any more specific argument regarding a particular estimate--even though, as indicated in its comments, the firm suspected inaccurate area measurements in

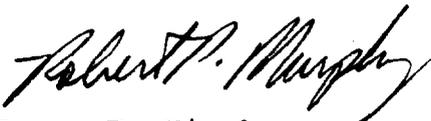
^{1/} The Army asserts that Teltara is not an interested party eligible to bring this protest because it is not the second-low bidder. We find Teltara does have the requisite interest; the appropriate relief if the protest were sustained would be cancellation and resolicitation of the requirement after amendment of the IFB, in which case, Teltara would be able to bid on the corrected IFB. See Cobra Technologies, Inc., B-238031 et al., Feb. 27, 1990, 90-1 CPD ¶ 242.

the solicitation after bid opening on September 5. As Teltara was first aware of its specific basis for protest on September 5, the bid opening date, and its argument relating to inaccurate measurements was not received in our Office until November 7, it is untimely and will not be considered.

In any case, we do not agree with Teltara that the allegedly ambiguous area estimates constituted latent defects, i.e., defects that could not be detected in the IFB prior to bid opening. If the square footage listed in the solicitation was inaccurate, this was something that prospective bidders, particularly Teltara as the incumbent, should have been able to determine before bid opening by comparing the IFB estimates with information obtained during the site visit provided for in the IFB. (In fact, Teltara did file a pre-bid opening protest with the agency alleging that the estimate for one area was inaccurate based on its experience as the incumbent.) Under these circumstances, any defect in the estimates would have been apparent on the face of the IFB and thus would have to be protested prior to bid opening in order for the protest to be timely under our Regulations. 4 C.F.R. § 21.2(a)(1). Teltara did not protest until after bid opening.

As for Teltara's timely argument that the disparity in bid prices is indicative of some latent IFB defect, we have held that a wide range of bid prices is not by itself conclusive evidence that bids were not prepared based on an equal understanding of the requirement. See, e.g., Crimson Enters., Inc., B-209918.2, June 27, 1983, 83-2 CPD ¶ 24. Here, no bidder other than Teltara has complained about the IFB, and there is no other evidence that bidders misunderstood the requirement.

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel