



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Institute for Wildlife Studies

File: B-242375

Date: January 18, 1991

David K. Garcelon for the protester.
Catherine M. Evans, Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest of terms of solicitation, including contract requirements and evaluation criteria, is untimely where not filed prior to time set for receipt of proposals.

DECISION

Institute for Wildlife Studies (IWS) protests the award of a contract to another offeror under request for proposals (RFP) No. RM-90-42, issued by the Department of Agriculture, Forest Service, for a study of the demographics of Mexican Spotted Owls. IWS principally objects to a number of solicitation provisions.

We dismiss the protest.

The RFP provided that proposals would be evaluated based on technical factors and price. IWS submitted alternative proposals, one offering to utilize the Forest Service monitoring protocol as required in the RFP, and the other proposing substantial cost reductions without the monitoring protocol. After submitting its technical and cost proposals, IWS received a request for a best and final offer (BAFO). The BAFO request stated that award would be made to the offeror submitting the proposal deemed most advantageous to the government, price and other factors considered. The BAFO request also informed IWS that only its proposal incorporating the monitoring protocol was being considered, and requested several clarifications of that proposal. The request also notified IWS that its proposed price was substantially higher than the government estimate. IWS submitted its BAFO along with its responses to the agency's concerns. On November 29, 1990, the contracting officer notified IWS by telephone that award had been made to Humboldt State University; IWS filed its protest in our Office on December 17.

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IWS protests on several grounds, alleging that: (1) the agency did not furnish the RFP to IWS in a timely fashion; (2) the RFP was not well-designed; (3) the monitoring protocol requirement in the RFP was not necessary to meet the agency's minimum needs; (4) the relative weights of the evaluation criteria in the RFP were vague; and (5) IWS was not told why its proposal not to use the monitoring protocol was unacceptable. These allegations all are untimely.

Our Bid Protest Regulations provide that protests based upon alleged apparent improprieties in an RFP, to be deemed timely, must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1990). IWS' first four protest grounds concern alleged improprieties in the RFP and, as its protest was not filed until after the closing date for receipt of proposals, therefore are clearly untimely and will not be considered. As to the fifth allegation, the RFP placed IWS on notice that the monitoring protocol was required, and IWS' alternate proposal apparently was rejected because it did not satisfy this requirement. To the extent IWS' protest can be read as challenging the agency's refusal to consider the proposal on this basis, it is essentially a post-closing date challenge of the monitoring protocol requirement, and as such also is untimely.

IWS also complains generally that the agency would not provide it with information on how its proposal compared to the awardee's proposal; the agency advised IWS only that there was no technical fault with either its or the awardee's proposal and that the award decision was based on Humboldt's lower cost. IWS does not allege, and nothing in its submission indicates there is reason to believe, that the agency improperly evaluated the proposals. As the solicitation provided for consideration of both technical factors and price in the award decision, IWS' mere statement that the agency has not furnished requested information does not constitute a sustainable basis of protest. See Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (e); Professional Medical Prods., Inc., B-231743, July 1, 1988, 88-2 CPD ¶ 2.

The protest is dismissed.


John M. Melody
Assistant General Counsel