



Comptroller General
of the United States

Washington, D.C. 20548

Maeder

Decision

Matter of: Evaporator Services & Consulting, Inc.

File: B-242395

Date: March 13, 1991

A. M. Washburn for the protester.
Timothy J. Rittof, for HPD Incorporated, an interested party.
Lester Edelman, Esq., Department of the Army, for the agency.
Jacqueline Maeder, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest to General Accounting Office filed more than 10 working days after oral notification of the basis of protest is dismissed as untimely.

DECISION

Evaporator Services and Consulting, Inc. (ESC) protests the rejection of its offer and the award of a subcontract to HPD Incorporated under request for proposals (RFP) No. 19987-018-E1E-R1, issued by Bechtel National, Inc., a prime contractor acting for the government, for Brine Reduction Area Evaporators.^{1/} The RFP requires the subcontractor, among other things, to design, fabricate, test and deliver a possible total number of 12 brine evaporator systems, to reduce to a

^{1/} The RFP issued by Bechtel National was issued under contract No. DACA87-89-C-0007, which had been awarded to Bechtel on November 4, 1988, by the Army Corps of Engineers, Huntsville Division. The award was for as a cost reimbursement plus fixed-fee contract for the procurement of equipment in support of the Chemical Stockpile Disposal Program under which the U.S. stockpile of lethal chemical agents and munitions are to be destroyed by April 30, 1997. Under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551(1) (1988), our Office has jurisdiction to decide protests involving contract solicitations and awards by federal agencies. We have interpreted this provision as authorizing us to decide protests, as here, of subcontract solicitations and awards when the subcontract is "by or for the government." 4 C.F.R. § 21.3(m)(10) (1990).

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salt concentrate the brine liquors released during the demilitarization of chemical agents and munitions.

We dismiss the protest as untimely.

The Department of the Army has advised us that Bechtel notified ESC by letter dated October 29, 1990, that ESC's proposal was rejected as technically unacceptable and would not be given further consideration because the proposal was deficient regarding the company's fabrication facilities, resources and personnel, subcontractor qualifications and record of past performance. Bechtel personnel reiterated these deficiencies in an October 31 telephone conversation with a representative from ESC. The contracting officer issued a written authorization to subcontract on November 5, and award was made to HPD on December 12. In a December 11 telephone conversation between ESC and Bechtel representatives, the Bechtel representative disclosed the award price. ESC apparently commented that the award was a "poor use of public money."

ESC does not dispute the agency's statement of facts. Instead, ESC states that it protested the award to our Office "as soon as the [award] amount was known." ESC says that it would not have protested "[h]ad any company agreed to do the work for less than ESC proposed." We received ESC's protest on December 18.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), require that protests must be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier. Here, ESC filed its protest with our Office after learning that the awardee's price was higher than the price it offered. ESC protests that the evaluation process was "unfair and faulty" and that the award at the higher price was irresponsible. ESC argues that, contrary to Bechtel's evaluation, its personnel and subcontractors meet the solicitation specifications and its proposal is superior to that of HPD. ESC suggests that it had no reason to protest until after it received the price information. We disagree.

In our view, ESC learned of its basis of protest - Bechtel's decision that ESC's proposal was technically unacceptable and that ESC would not be considered for award - on October 31 during the telephone conversation between the Bechtel and the ESC representatives. Accordingly, any protest to our Office should have been filed by ESC within 10 working days of October 31. 4 C.F.R. § 21.2(a)(2); See PHE/Maser, Inc., B-238367.4, July 5, 1990, 90-2 CPD ¶ 10.

Moreover, to the extent that ESC challenges award to HPD on the grounds that HPD's price is excessive, CICA authorizes our

Office to decide a protest filed against the award or proposed award of a contract by an "interested party," which CICA defines as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0(a). In order to have the requisite interest, the protester must be in line for award if the protest were to be sustained. Discount Mach. & Equip., Inc., B-240426.6, Jan. 23, 1991, 91-1 CPD ¶ 66. Here, since ESC's offer was rejected as technically unacceptable, and the protest challenging the rejection is untimely, ESC would not be in line for award even if its protest challenging award to HPD were sustained. Accordingly, ESC is not an interested party to raise this issue.

The protest is dismissed.


for John F. Mitchell
Assistant General Counsel