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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Central Texas College

File: B-243212

Date: May 21, 1991

James R. Lindley, Esq., for the protester.
Captain Sophia L. Rafatiah, Esq., and Herbert F. Kelley, Jr.,
Esq., Department of the Army, for the agency.
Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

1. Allegation that agency improperly applied a 10 percent preference to an offeror which certified that it qualified as a Minority Institution is dismissed as untimely where the solicitation included Department of Defense Federal Acquisition Regulation Supplement S 252.219-7007, which expressly provides for this preference and the protester did not protest this issue prior to the closing date for receipt of proposals.
2. Protest that contracting agency awarded contract based solely on price is denied where record demonstrates that award was made to the highest technically rated, lowest-priced offeror.

DECISION

Central Texas College (CTC) protests the award of a contract to the University of Alaska-Anchorage (UAA) under request for proposals (RFP) No. DAHC76-91-R-0001, issued by the Department of the Army for Army-specific functional instruction in the Basic Skills Education Program at Forts Richardson, Wainwright, and Greely, Alaska. CTC alleges that the agency improperly applied a price preference to a Minority Institution, and based the award solely on price without regard to technical factors.

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

The solicitation provided that award would be made to the offeror whose proposal represented the best overall value to the government. The RFP stated that proposals would be evaluated on technical and price factors, with technical

"substantially more important than price." The following technical factors were listed in descending order of importance:

- (1) Technical experience
- (2) Understanding Army-specific, functional requirement.
- (3) In-Service Instructor Training Plan.
- (4) Quality Control Plan.

The solicitation was issued as an unrestricted procurement and included Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 252.219-7007 which provides an evaluation preference for small disadvantaged businesses (SDB), the definition of which includes Historically Black College/Universities or a Minority Institution (HBCU/MI). DFARS § 252.219-7007(d). This provision notifies offerors that a 10 percent price evaluation preference will be given to SDBs and HBCU/MIs. The clause provides that an offeror seeking consideration as an HBCU/MI must, upon request, submit a certification as to this status.

Four proposals were received by the December 14, 1990 closing date, three of which, CTC, UAA and Pikes Peak Community College (PPCC) were included in the competitive range. Revised proposals were requested from the offerors in the competitive range by a letter dated December 27. The contracting officer requested best and final offers (BAFOs) from these offerors by a letter dated February 8, 1991. The request for BAFOs included a copy of DFARS § 252.226-7001 and stated that: "The attached clause, DFARS § 252.226-7001, entitled 'HISTORICALLY BLACK COLLEGES AND UNIVERSITIES/MINORITY INSTITUTION CERTIFICATION' must be filled in and returned as part of your proposal." BAFOs were due on February 13.

CTC submitted its BAFO on February 11, and in its cover letter stated: "Central Texas Colleges acknowledges the incorporation of DFARS Clause § 252.226-7001, and certifies that it is neither a Historically Black College/University or a Minority Institution. UAA certified that it qualified as a Minority Institution, as a result of which it received the 10 percent price preference as provided for by the solicitation. The revised technical ratings and prices, including the 10 percent preference, were as follows:

	Total Price	Technical Points
UAA	\$699,167.28	88.50
PPCC	\$525,576.42	71.25
CTC	\$502,452.81	68.25

Since UAA received the highest technical score and proposed the lowest evaluated price, the contracting officer determined that UAA's offer represented the best overall value to the government and awarded it the contract on February 22. CTC protested this award on March 8.

CTC challenges the award on the grounds that the contracting officer awarded the contract based solely on price, and that it was improper of the agency to give UAA the 10 percent preference because it had not officially amended the solicitation to include the certification provision, DFARS § 252.226-7001.

We dismiss as untimely CTC's protest that the agency's application of the 10 percent preference for UAA was improper. The solicitation expressly provided for the use of this preference as stated in DFARS § 252.219-7007(d), and the BAFO request included the required certification, both of which CTC acknowledged. If CTC believed that the preference should not be applied to this procurement then its protest concerned an apparent solicitation impropriety which must be filed, in order to be timely, prior to the closing date for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1) (1991). If CTC thought that the inclusion in the request for BAFOs of the certification clause was insufficient to amend the solicitation then it was required to protest this issue prior to the date set for receipt of BAFOs.^{1/} Id.

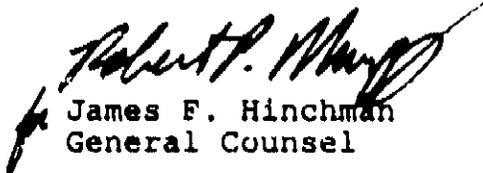
CTC also objects that the contracting officer based the award determination solely on price without regard to technical considerations, which contradicts the terms of the solicitation. Apparently, CTC is arguing that the contracting officer, in bad faith, "fixed" the technical scores after all prices had been revealed and adjusted with the 10 percent preference.

In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the evaluation was reasonable and consistent with the evaluation criteria. Atmospheric Research Sys., Inc., B-240187, Oct. 26, 1990, 90-2 CPD ¶ 338. Here, the record demonstrates that the contracting officer awarded the contract to the offeror with the highest technical score and the lowest evaluated price as contemplated by the solicitation. CTC received the lowest technical score and has received a debriefing, but has not challenged the agency's technical evaluation of its proposal,

^{1/} We note that since the clause was communicated in writing to all offerors in the competitive range the solicitation was, in fact, amended to include the clause. See Comprehensive Mktg. Sys., Inc., B-238596, May 29, 1990, 90-1 CPD ¶ 507.

or that of the awardee. The record provides no basis to question the contracting officer's award decision, since it is in accordance with the solicitation evaluation criteria. CTC's unsupported assertion of agency wrongdoing does not establish agency bias or bad faith. Jaycor, B-240029.2 et al., Oct. 31, 1990, 90-2 CPD ¶ 354.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel