



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: All American Moving and Storage

File: B-243630; B-243804

Date: July 8, 1991

Ford L. Wright for the protester.
Eric A. Lile, Esq., and Michael S. Roys, Esq., Department of the Navy, for the agency.
Linda C. Glass, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency's disclosure of protester's prices under original solicitation and immediate issuance of a revised solicitation for the same requirement will result in an auction is untimely where protester did not file protest until 2 months after denial of its agency-level protest.
2. Where agency in its report responds in detail to issues raised in the initial protest, and the protester admits in its rebuttal comments on the agency report that one issue had been clarified, and does not rebut the agency's response to the other issues, the issues are deemed abandoned.

DECISION

All American Moving and Storage protests the issuance of invitation for bids (IFB) No. N00612-91-B-0139 by the Naval Supply Center Charleston for packing, crating and drayage of household goods in Memphis, Tennessee. The protester principally maintains that the solicitation will result in an auction.

We dismiss the protests.

Request for proposal (RFP) No. N00612-90-R-0386 (RFP-0386) was originally issued for this requirement on August 30, 1990, as a small disadvantaged business set-aside. Only two offers were received by the closing date of September 26, 1990, only one of which was a small disadvantaged business. Because of the lack of small disadvantaged business participation and the fact that prior solicitations were issued on a small business

set-aside basis, the Navy modified the solicitation to a small business set-aside, changed the estimated quantities and provided copies to all firms on the original mailing list.

In response to an agency-level protest filed by All American objecting to the acceptance of any offers from offerors which had not previously submitted offers, the Navy, on December 14, 1990, canceled the solicitation and issued RFP No. N00612-91-R-0097 (RFP-0097). Since the Navy did not intend to evaluate the offers received in response to the original solicitation (RFP-0386), a decision was made to return them to the offerors. However, when mailing the offers back, the Navy inadvertently placed some offers in the wrong envelopes, resulting in offers from some contractors being sent to their competitors. As a result of this error and the need to include additional line items for certain option quantities, the Navy canceled the second RFP.

By letter of January 18, 1991, All American filed another agency-level protest objecting to the release of its proposal and prices and requesting that award be made on the basis of the original solicitation and the prices offered in October 1990, under RFP-0386. The Navy denied this protest on January 28, 1991. Subsequently, on March 19, IFB No. N00612-91-B-0139 (IFB-0139) was issued for the requirement with an amended closing date of May 13, 1991. All American received a copy of the IFB on March 22. All American filed another agency-level protest complaining that the wage determination contained in the IFB was improper. On April 15, the IFB was amended to correct the wage determination. Meanwhile, on April 10, All American filed a protest with our Office objecting to the Navy's failure to respond to several Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988), requests and the Navy's release of its proposal submitted under the original RFP to its competitor. On April 25, All American filed an additional protest objecting to certain provisions of the newly issued IFB.

All American basically objects to the disclosure of its prices under the prior solicitation and the immediate issuance of the new solicitation for the same requirement.^{1/} All

^{1/} All American also objects to the Navy's failure to respond to its requests under FOIA for an abstract of the offers and of the pricing schedules of each offer submitted in response to the original RFP. Our Office has no authority under FOIA regarding the release of documents in the possession of an agency. Energy Complexes, Inc., B-209454, July 26, 1983, 83-2 CPD ¶ 125. The protester must pursue its disclosure remedy under the provisions of the Act.

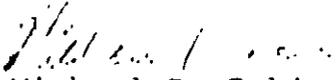
American maintains that because of the price disclosure, issuance of the new solicitation should be delayed to avoid an impermissible auction. To alleviate the damage caused by the disclosure of prices, All American suggests that the new IFB be canceled and that a new solicitation not be issued until October 1991.

We consider All American's protest on these matters to be untimely. Our Bid Protest Regulations provide that if an initial protest has been filed timely with the contracting agency, we will consider a subsequent protest to our Office if it is filed within 10 working days after the protester has acquired knowledge of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3) (1991). Here, All American filed a protest with the Navy raising these identical issues. By letter dated January 28, 1991, and received by the protester on January 31, the Navy responded to the protest by expressing its regrets that proposals were inadvertently sent to the wrong offerors but providing that a new solicitation would in fact be issued and that its contrary request was denied. The Navy then issued the new solicitation on March 19. To be timely, All American's protest to our Office had to be filed within 10 working days of the denial of its agency-level protest since it was clear then that the agency was not, as the protester requested, delaying until October 1991, to repro cure the requirement. Since All American's initial protest was not filed until April 10, more than 10 working days after the agency's January 28 letter, it is untimely.

Finally, All American, in its protest filed with our Office on April 25, raised a number of objections to certain alleged deficiencies in the newly issued IFB. Specifically, All American objected to the Navy's alleged failure to: (1) provide a closing date; (2) incorporate the proper wage determination; and (3) clarify how pricing will be evaluated. The agency, in its report, stated that the IFB had been amended to provide the closing date and the proper wage determination. The agency, in its report, also explained in detail how, in accordance with the terms of the IFB, prices were to be evaluated. All American in its comments to the agency report admits that the price evaluation had been clarified and does

not attempt to rebut the Navy's response to the other issues. We therefore will not address these issues in this decision. See generally The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.

The protests are dismissed.


Michael R. Golden
Assistant General Counsel