



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: D.E.W. Management Services, Inc.

File: B-246761; B-246761.2

Date: April 1, 1992

Katherine S. Nucci, Esq., and Timothy Sullivan, Esq., Dykema Gossett, for the protester.
Bobby G. Henry, Jr., Esq., and Herbert K. Kelley, Jr., Esq., Department of the Army, for the agency.
John Formica, Esq., and James A. Spangenberg, Esq.; Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where agency responds in detail to the protester's contention, made in its initial protest, that its proposal was wrongfully found technically unacceptable and the protester, in its comments on the agency report, fails to address in any way the agency's detailed response, the issue is deemed abandoned and will not be considered by the General Accounting Office.

2. Protester, which does not contest that it was properly found technically unacceptable, is not an interested party under the Bid Protest Regulations eligible to protest the award without discussions to the low-priced, technically acceptable offeror in accordance with solicitation evaluation criteria.

DECISION

D.E.W. Management Services, Inc. (DEW), protests the award of a contract to Tag Company, Inc. under request for proposals (RFP) No. DAHC76-91-R-0008, issued by the Department of the Army for mess attendant services for Fort Wainwright and Fort Greely, Alaska. DEW argues that the Army acted improperly in finding its proposal technically unacceptable, and awarding the contract without conducting discussions.

We dismiss the protests.

The RFP, which was issued on July 2, 1991, as a competitive set-aside pursuant to section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988),¹ contemplated the award of a fixed-price contract for a base period of 1 year with two 1-year options. The RFP stated that award would be made to the low priced, technically acceptable offeror. The RFP also informed offerors of the agency's intent to make award without conducting discussions with the offerors (other than discussions conducted for the purpose of minor clarification), unless the contracting officer determined that discussions were necessary. In view of the agency's stated intent to award the contract without discussions, the RFP also advised the offerors that their initial offers should contain the offerors' best cost or price and technical terms.

The Army received nine proposals, including DEW's, by the RFP's closing date of August 23, 1991. The proposals were evaluated, and DEW's proposal was found technically unacceptable and rejected. DEW's proposal did not contain adequate staffing to provide the services required and provided for a 60-day phase-in period not provided for in the solicitation. Tag and another offeror were found technically acceptable, and Tag was selected for award as the lowest priced, technically acceptable offeror in accordance with the RFP evaluation criteria.

DEW first protested that the Army unreasonably determined that its proposal was technically unacceptable. The Army responded in detail to DEW's allegations in its administrative report submitted in response to this protest. The Army explained that it found DEW's proposal technically unacceptable because, among other things, DEW's proposed staffing levels were substantially below the government estimate, and did not appear to include staff to provide services before and after the facilities' operational hours as required. Also, DEW proposed a 60-day phase-in period that was not provided for in the solicitation. Consequently, the Army concluded that DEW did not understand the requirements of the contract and found DEW technically unacceptable. Since DEW, in its comments on the report, failed to address in any way the Army's documented position that its proposal was unacceptable, we consider this issue to be abandoned. Hampton Rds. Leasing, Inc., 71 Comp. Gen. 90 (1991), 91-2 CPD ¶ 490.

¹The provisions of the Federal Acquisition Regulation (FAR) apply to such procurements. 13 C.F.R. § 124.311(f) (1991); Macro Serv. Sys., Inc., B-246103; B-246103.2, Feb. 19, 1992, 92-1 CPD ¶ 200.

DEW also protests that the Army acted improperly in making award to other than the lowest offeror on the basis of initial proposals without conducting discussions. Inasmuch as DEW no longer contests that its proposal was improperly found technically unacceptable, it is no longer in line for award under the RFP, which provides for award to the low-priced, technically acceptable offeror. Consequently, DEW is not an interested party eligible to complain about the agency's determination that discussions were unnecessary² or the award to Tag. See Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1991); InterAmerica Research Assocs., Inc., B-237306.2, Feb. 20, 1990, 90-1 CPD ¶ 293.

DEW finally complains that the agency failed to notify the firm of its intention to award a contract to Tag prior to award, as required by FAR §§ 15.1001(b), (c). DEW argues that this alleged lack of prompt notification deprived it of its opportunity to timely protest the eligibility of Tag for the award of this contract, which was, as mentioned previously, a competitive set-aside under the section 8(a) program.

DEW's arguments here too are without merit. FAR § 15.1001(b)(2) applies to small business set-asides, not to competitive acquisitions conducted under the section 8(a) program. As to DEW's concern that it was deprived of the opportunity to challenge Tag's eligibility for this award, we note that FAR § 19.805-2(e) expressly provides that

²We note that FAR § 15.610(a) authorizes agencies whose procurements are governed by Title 10 of the United States Code to award contracts on the basis of initial proposals without conducting discussions if, as in this case, the contracting officer determines that discussions are not necessary and the solicitation contains the provision at FAR § 52.215-16 with its Alternate III. The language of Alternate III, which was included in this solicitation, provides:

"The Government intends to evaluate proposals and award a contract without discussions with offerors (other than discussions conducted for the purpose of minor clarification). However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint."

Here, the agency did not act improperly in making award to Tag--which had submitted the low priced, technically acceptable offer--on the basis of initial proposals.

"[t]he eligibility of an 8(a) firm for a competitive 8(a) award may not be challenged or protested by another 8(a) firm or any other party as part of a solicitation or proposed contract award."

The protests are dismissed.



James A. Spangenberg
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