



Comptroller General
of the United States

Washington, D.C. 20548

147788
Cunningham

Decision

Matter of: Life Uniform Corp.

File: B-248996

Date: October 9, 1992

Sylvia M. Lopez for the protester.
Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.
James M. Cunningham, Esq., Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly determined to make award to firm which submitted higher rated, higher priced proposal in procurement where price was less important than technical evaluation factors and the contracting agency reasonably concluded that the technical superiority of the awardee's proposal outweighed the higher price.

2. Protest based upon information in agency report submitted in response to timely protest is untimely where filed more than 10 days after protester's receipt of protest.

DECISION

Life Uniform Corp. protests award of a contract by the Defense Logistics Agency (DLA), Defense Personnel Support Center (DPSC), to Rutter-Rex Manufacturing Corporation under request for proposals (RFP) No. DLA100-91-R-0541. This RFP sought proposals for a quantity of men's long-sleeve shirts. Life protests that the contract should have been awarded to it on the basis that it proposed a lower price than Rutter-Rex.

The protest is denied in part and dismissed in part.

The RFP was issued on December 4, 1991, and contemplated award of a firm, fixed-price contract. The RFP provided that proposals would be evaluated as "highly acceptable," "acceptable," "marginally acceptable," or "unacceptable" under the following technical evaluation criteria: product demonstration model; manufacturing plan; quality assurance

plan; and experience/past performance. The RFP also stated that technical factors were more important than price and provided that award would be based on the proposal most advantageous to the government, price and technical factors considered.

On or before the January 3, 1992, closing date, the agency received seven proposals, including those of Rutter-Rex and Life. The agency determined that Rutter-Rex's proposal was "acceptable" under all four technical evaluation factors; Life's proposal was evaluated as "acceptable" under three technical evaluation factors and "marginally acceptable" with regard to experience/past performance. Rutter-Rex proposed a total price of \$1,731,456; Life proposed a total price of \$1,727,608.

The agency determined that the technical difference between Rutter-Rex's proposal and Life's proposal outweighed the slight price advantage offered by Life (less than 1 percent). Accordingly, the agency awarded a contract to Rutter-Rex.

Life protests the agency's price/technical trade-off asserting that "even if [Rutter-Rex's] proposal was [rated] technically higher, if [Life's proposal] was [rated] within just a few points, DPSC should make award to the low bidder."

It is well-established that a contracting agency may award to an offeror with a higher technical score and a higher price where, as here, the RFP places greater emphasis on technical merit relative to price, and the price premium is justified. Network Sys. Solutions, Inc., B-246555, Mar. 19, 1992, 92-1 CPD ¶ 294. We will not object to an agency's price/technical tradeoff provided it is rational and consistent with the solicitation provisions. Virginia Technology Assocs., B-241167, Jan. 29, 1991, 91-1 CPD ¶ 80.

Here, prior to selecting Rutter-Rex for contract award, the contracting officer noted that the RFP provided that technical factors were more important than price and, in light of that RFP provision, made a written determination that "the difference in price [between Rutter-Rex's and Life's proposals] of \$3,847.68 is a minimal amount when considering the likelihood of receiving an inferior item and untimely deliveries as the recent experience with Life Uniform has shown. . . . It is the opinion of the

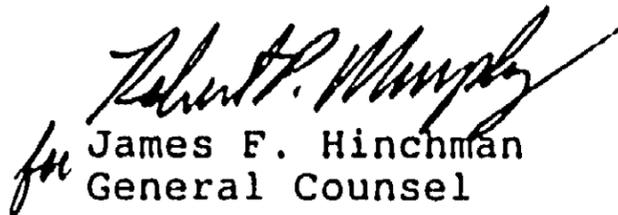
¹Specifically, the contracting officer noted that, under two recent shirt contracts with DLA, Life "made delinquent deliveries, encountered serious quality problems, and was months behind schedule on both contracts."

Contracting Officer that the offer of [Rutter-Rex] represents the best value to the Government." On this record, we have no reason to question the rationality of the agency's determination, and it is consistent with the RFP evaluation provisions. Accordingly, this portion of Life's protest is denied.

After receiving the agency report, Life for the first time raised several issues regarding the substance of the agency's technical evaluation of the proposals. However, these issues were raised with our Office more than 10 days after Life received the agency report on which its supplemental protest is based.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests challenging adverse agency actions must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest. 4 C.F.R. § 21.2(a)(2) (1992). Where a protester initially files a timely protest and subsequently supplements it with new and independent grounds, the later-raised allegations must independently satisfy the timeliness requirements. Midwest Contractors, Inc.; R.E. Scherrer, Inc., B-231101; B-231101.2, Aug. 8, 1988, 88-2 CPD ¶ 118. Since Life's later-raised allegations fail to satisfy the timeliness requirements, that portion of its protest is dismissed.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel