



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Tucson Mobilephone, Inc.

**File:** B-255423.2

**Date:** April 14, 1994

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### DECISION

Tucson Mobilephone, Inc. protests the government's decision not to request best and final offers (BAFO) under request for proposals (RFP) No. F41652-93-R-0161, issued by the Department of the Air Force, Dyess Air Force Base, Texas, for the maintenance of all land mobile radios used at the base. We dismiss the protest as untimely.

The solicitation was issued on July 25, 1993, and contemplated the award of a firm, fixed-price contract to provide all personnel, equipment, tools, and material necessary for recurring and nonrecurring maintenance of commercially manufactured land mobile radio communications equipment and systems. The solicitation provided for award to the responsible offeror whose proposal was technically acceptable and offered the lowest overall price to the government. The solicitation also provided that award may be made on the basis of initial proposals, without discussions, and that therefore each initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The amended closing date for receipt of proposals was October 14.

On October 14, prior to closing, Tucson, the incumbent contractor, filed a protest with our Office. Tucson argued that there were a number of restrictive, unreasonable requirements in the RFP which put Tucson at a competitive disadvantage, made it difficult to determine what work was to be done, and required it to discriminate in its hiring practices. Tucson raised the following specific allegations: (1) inaccurate estimated quantities for non-recurring contract line items (CLINS); (2) inadequate description of equipment to be maintained; (3) lack of a nonrecurring inventory list; (4) lack of a way to identify and maintain new equipment; (5) suggestion that hourly rates would be more appropriate for nonrecurring CLINS; and (6) ambiguity on processing of payment. Tucson requested that the closing date be extended and that the contracting

officer be directed to provide the model numbers and the quantities for each model of the items to be serviced as nonrecurring items so that there was a separate price for each model number. In the absence of providing this information, Tucson requested that the handling of nonrecurring maintenance be accomplished at an hourly rate plus parts and special software support. Three proposals, including one from Tucson, were received by the closing date.

On November 15, the agency responded to the protest by asserting that the solicitation contained the necessary information for any contractor to fairly and intelligently compete for the contract, and that its provisions were unreasonable or unduly restrictive. The agency specifically responded to each allegation raised by the protester and explained how the contract would operate. In early December, Tucson contacted the agency and offered to withdraw its protest if the agency would provide a breakout of certain model numbers of equipment to be maintained and allow submittal of BAFOs. The contracting officer denied the request.

On December 3, Tucson filed its comments on the agency report. In its comments, Tucson stated that it did not object to the agency's position as explained in the report, except as to the issue of how the pricing of the nonrecurring maintenance was to be handled. Tucson requested our Office to direct the agency to change the nonrecurring line items and to specifically state that the solicitation contained a complete listing of all equipment covered under the recurring and nonrecurring portions of the contract. Tucson also requested that the agency be directed to ask for BAFOs so all offerors could take into account the explanations given by the agency in response to the protest.

As a result of Tucson's comments to the agency report, the agency contacted the other offerors to verify receipt of the report and to ask whether anything in the report would result in the need to change their proposals. The offerors responded that they would not change their proposals based on the information in the report.

In early January 1994, the protester again approached the agency and proposed that if the agency agreed to clarify the solicitation as outlined in the agency report and request BAFOs, Tucson would withdraw the protest. On January 18, the agency rejected Tucson's settlement offer and also advised Tucson that the contracting officer, after review of the proposals, did not believe it was necessary to request BAFOs.

On January 31, Tucson filed this protest with our Office and argued that the additional information given by the contracting officer in response to its initial protest explains the terms of the solicitation and should be provided to all offerors with the opportunity for all offerors to submit a BAFO based on the new information. On February 3, Tucson withdrew its initial protest stating that "it can live with the clarification and representations of what is required by the solicitation."

The agency maintains that there is nothing wrong with the solicitation that would require an amendment and submission of new proposals or BAFOs. The agency also argues that Tucson's protest is untimely because it is based on the agency report submitted in response to the protester's initial protest. In this regard, the agency notes that Tucson received the report on November 18, 1993, and should have filed its supplemental protest within 10 working days, or by December 3.

We agree with the agency that Tucson's protest that the agency should amend the solicitation in order to allow offerors to review their proposals in light of the agency's explanation of its requirements in its agency report submitted in response to Tucson's initial protest is untimely. A protest must be filed within 10 working days after the basis of protest is known, or should have been known. 4 C.F.R. § 21.2(a)(2) (1993); Lunn Brothers, Inc.-- Recon., B-248423.2, Nov. 9, 1992, 92-2 CPD ¶ 328. Our procedures do not contemplate a precereal presentation or development of protest issues. Pennsylvania Blue Shield, B-203338, Mar. 23, 1982, 82-1 CPD ¶ 272.

Tucson, in its initial protest, argued that the solicitation contained numerous ambiguities and unduly restrictive terms. Tucson wanted the agency to amend the solicitation to clarify its requirements and to give it an opportunity to submit a new proposal. The agency, in its response to the protest, which was received by Tucson on November 18, maintained that the solicitation was not ambiguous or unduly restrictive and provided offerors an opportunity to fairly compete and, therefore, an amendment was not necessary. Tucson, in its response to the agency report, requested that the agency be directed to ask for BAFOs so all offerors would be able to take into account the explanations given by the agency in response to the protest. Before our Office could resolve the matter, Tucson withdrew its protest and specifically stated that it would accept the clarifications. At the time Tucson received the report in response to its initial protest, Tucson knew the agency firmly believed that the solicitation was adequate and that an amendment was not necessary. If Tucson believed that the agency's explanations concerning the terms of the solicitation would

help an offeror in preparing its proposal, Tucson should have protested this on December 3, 10 working days after receipt of the report. We therefore conclude that Tucson's protest that the solicitation must be amended and the competition should be reopened, filed almost 2 months later on January 31, is untimely.

The protest is dismissed.



Michael R. Golden  
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On January 18, the agency advised Tucson that it had decided, after evaluating the proposals, separate and apart from the protest issue, that award could properly be made without discussions and that in this regard, BAFOs were unnecessary. A contracting officer is under no obligation to conduct discussions where the solicitation advises all offerors that the government may make award on the basis of initial proposals without holding discussions. For this reason, the solicitation here specifically warned offerors that initial proposals should contain the offeror's best technical and price terms. There is no obligation on a contracting agency to negotiate when the RFP specifically instructs offerors to provide their best terms in their initial proposals. See generally *Twiggs Aerospace Components*, B-236332, Nov. 21, 1989, 89-2 CPD ¶ 485.