



Comptroller General
of the United States

223194

Washington, D.C. 20548

Decision

Matter of: System One Corporation

File: B-256186

Date: April 19, 1994

DECISION

System One Corporation protests the award of a contract to United Airlines, Inc. under request for quotations (RFQ) No. DAHC92-93-Q-0789, issued by the Department of the Army for rental/maintenance of a computerized electronic reservations and ticketing system. System One objects to the award to United based on United's offer of a rebate because the RFQ did not specifically provide that rebates would be considered.

We dismiss the protest as untimely.

The RFQ was issued on August 26, 1993, using small purchase procedures. Federal Acquisition Regulation (FAR) § 13.1. The RFQ contemplated the award of a purchase order for the lease of a direct access reservation system, including five work stations, a ticket printer, an itinerary printer and a modem at Fort Clayton in the Republic of Panama. The lease was to include transportation and training of five office personnel. The RFQ required quotes to be submitted by August 31. System One, the incumbent contractor whose agent in Panama was Continental Airlines, Inc., asked agency personnel if it would be acceptable for System One to submit its quote by facsimile transmission on September 1, and was told that it would be acceptable.

Quotations were received from Continental, United, and American. United's offer was for \$25.00 per month if no tickets were sold, but a 3.5 percent rebate/discount on the value of all tickets sold. United's rebate was based on the dollar volume of tickets purchased through the system. The agency evaluated United's price, considering the rebate, as \$0.00. Continental's price was \$1.00 per year and American's was \$0.75 per month.

On September 8, System One was advised by the agency that it was awarded the contract as the low priced vendor. Later that day, System One was informed that a quote had been

received which offered a rebate and that the agency was evaluating whether it could consider the offer of a rebate. The agency subsequently decided that the offered rebate could be considered and on November 24, issued one purchase order to Continental and a purchase order to United.

Continental received a purchase order, in the amount of \$1.00, for lease of their equipment during the period of October 1, 1993 through December 31, 1993, in order to continue the services until United could become operational. Based on the current volume of tickets issued, the agency determined that the lease value for the equipment from United would result in no payment and issued a purchase order, in the amount of \$0.00, to United for the period of January 1, 1994 through September 30, 1994.

On December 1, the protester was advised by the directorate of contracting for the Army facility in Panama that the contract was awarded to United based on its offer of a rebate. System One met with several Army personnel to discuss the propriety of the award on the basis of an offered rebate, and was advised that the award was proper. On December 20, the protester filed an agency-level protest. In its protest to the agency, the protester specifically argued that "the problem is the unfairness inherent in accepting an offer based upon an evaluation of rebates included in the offer, when the RFQ did not indicate that rebates would be considered and the prior contracting history for this service led at least System One to believe that rebates would not be allowed." The agency denied the protest on December 30. On January 7, 1994, this protest was filed with our Office.

Our Bid Protest Regulations require that protests be filed within 10 working days after the basis for the protest is known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1993). Generally, a protester is charged with knowledge of a basis of protest if: (1) the protester's interests are threatened, and (2) the agency conveys to the protester a position adverse to the protester's interest. See Storage Technology Corp., B-194549, May 9, 1980, 80-1 CPD ¶ 333. Our Regulations also provide that a matter initially protested to an agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office (in this case, not later than 10 working days after the basis for protest was or should have been known). 4 C.F.R. § 21.2(a)(3).

The Army maintains that System One's protest to our Office is untimely because on December 1, the protester was advised that award was made to United, based on its offer of a rebate, but System One did not file its protest with the agency until December 20, more than 10 working days later.

System One argues that its protest to our Office is timely because based on its receipt of the Army's denial of its agency-level protest on December 30, it discovered that the Army improperly considered an offer of rebates on items allegedly outside of the contract. System One maintains in its basis for protest to our Office, that the "Army's decision to treat rebates on items not involved in the solicitation as an element of price under this contract, was not known to it until receipt of the Army's decision on its agency-level protest. We agree with the Army that the protest was untimely filed.

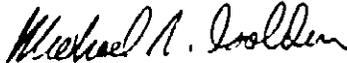
On December 1, System One was specifically informed that award was made to United on the basis of an offered rebate. The record shows that System One believed this information was adverse to its interest and attempted to persuade the agency to change its position. Whether or not System One chose to continue to informally pursue the matter with the agency, its protest had to be filed with our Office or with the agency within 10 working days of the initial notice of the agency's adverse position. See Phoenix Prods., Inc., B-248790; B-248791, Aug. 17, 1992 92-2 CPD ¶ 111. The agency's continuing discussions with the protester does not toll the timeliness requirements, since the agency advised System one on December 1 of the award of the purchase order to United based on United's offer of a rebate. See American Productivity & Quality Center, B-242703, Jan. 18, 1991, 91-1 CPD ¶ 60. Since System's agency-level protest was untimely, its subsequent protest to our Office is also untimely.

Notwithstanding Systems One's argument that it was only after the receipt of the agency's response to its agency-level protest that it learned that the specific terms of United's rebate offer were also improper, we believe System One's protest basis is generally that the Army failed to give all potential offerors an opportunity to submit prices based on rebates/discounts. It is clear that what System One objects to is the Army's acceptance of United's rebate offer. The fact that System One also believes that the terms of the rebate are also improper does not excuse System One's failure to timely file the protest against the evaluation and acceptance of United's rebate offer in the first instance.

System One argues that we nevertheless should consider its protest because the issue is important to the procurement community. We will not consider the merits of an untimely protest by invoking the significant issue exception unless the protest raises an issue of first impression that would be of widespread interest to the procurement community. Keco Indus., Inc., B-238301, May 21, 1990, 90-1 CPD ¶ 490. While we recognize the importance of the matter to the protester, its complaint, particular to this procurement,

does not present an issue not previously considered or of widespread interest to the procurement community. See Anne Riley & Assocs., Ltd., B-241309.2, Feb. 8, 1991, 91-1 CPD ¶ 142.

The protest is dismissed.


Michael R. Golden
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