



Comptroller General
of the United States

415115

Washington, D.C. 20548

Decision

Matter of: EMC Corporation

File: B-256363.2

Date: May 13, 1994

DECISION

EMC Corporation protests the terms of request for proposals (RFP) No. F19628-92-R-0078, issued by the Department of the Air Force, Electronic Systems Center, for the acquisition of replacement central processing units and direct access storage devices to be installed at the Defense Information Services Organization (DISO)-Denver Center and the DISO-Cleveland Center. The protester argues that the solicitation's evaluation factors for determining the life-cycle cost of each proposal improperly fail to measure the savings that might be generated by environmental factors.

We dismiss the protest as untimely because it challenges an alleged impropriety in the solicitation that should have been protested before the initial closing date for submission of proposals.

The solicitation was issued on November 23, 1993, with an extended date for receipt of initial proposals set for February 4, 1994. Section M3 of the RFP, which discusses the life-cycle cost evaluation, does not include any provision for the consideration of environmental factors. Indeed, prior to the submission of initial proposals, several prospective offerors, including EMC, expressed to the agency their concerns about the absence of such factors in the life-cycle cost determination. In each case, the agency reaffirmed its decision not to consider these factors.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests, reflecting the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. These rules specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals

must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1993); Englehard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. Here, ViON Corporation, another prospective offeror, filed a timely protest of the terms of the solicitation in our Office on February 3, 1994. ViON argued, among other things, that the solicitation improperly failed to account for the expected closure of the DISO-Cleveland Center, and that the RFP improperly failed to include environmental factors in its determination of the life-cycle cost of each proposal. EMC filed its protest on February 28.

EMC argues that it did not become aware of its basis of protest until February 14, when it received a copy of ViON's protest. The protester contends that ViON's protest gave EMC notice of the "significant possibility" that the Air Force would close the DISO-Cleveland Center and require that the rest of the contract be performed at another location. EMC asserts that, while the Air Force had told it that environmental costs were not included in the evaluation factors because differences in these costs would be negligible at the current DISO facilities, this new-found knowledge of the potential change in facilities gave EMC its basis for protest.

We think that the RFP's inclusion of a relocation clause was sufficient to place EMC on notice of the "significant possibility" that the Air Force would close the DISO-Cleveland Center and require that the rest of the contract be performed at another location. Amendment No. 0002, issued December 22, 1993, incorporated into the RFP clause H-143, "Relocation of Component(s)." This clause instructed prospective offerors that, in the event that any components being maintained under the terms and conditions of the contract were moved into a location not covered by the contract, the successful contractor would be required to continue to maintain the components at the new location. This clause clearly raised the issue whether either--or both--of the identified locations for the equipment, the DISO-Denver Center or the DISO-Cleveland Center, might be closed and the equipment relocated to another site.

Since, in our view, EMC's basis of protest was apparent from the face of the solicitation, its protest, filed more than 3 weeks after the date set for the submission of initial proposals, is untimely.

The protest is dismissed.

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