



Comptroller General
of the United States

236273

Washington, D.C. 20548

Decision

Matter of: Chromalloy Precision Products

File: B-257036.2

Date: January 27, 1995

DECISION

Chromalloy Precision Products protests the award of a contract to Sikorsky Aircraft¹ under request for proposals (RFP) No. DAAJ09-94-R-0002, issued by the United States Army Aviation & Troop Command (ATCOM) as a partial small business set aside for rotary wing head spindle assemblies for helicopters. Chromalloy alleges "on information and belief, that ATCOM either intentionally or inadvertently released to Sikorsky competition-sensitive information that prejudiced Chromalloy's chances for award of the contract."

We dismiss the protest.

BACKGROUND

The RFP was issued on February 8, 1994, and closed on April 14. Seven approved sources, including Chromalloy and Sikorsky, submitted offers. Prior to a request for best and final offers (BAFO), in June and July of 1994, ATCOM requested that preaward surveys (PAS) be conducted on the protester and three other firms; no request was made for a PAS on Sikorsky because the agency had sufficient information concerning that firm upon which to base a responsibility determination.

BAFOs were submitted on August 4 and Sikorsky, which submitted the second lowest final offer, was awarded a contract for the nonset-aside portion of the agency's requirements on September 16 after the low offeror was found to be nonresponsible. This protest was filed on September 26 following a September 22 debriefing at which Chromalloy was informed that Sikorsky had dropped its initial price by less than 3 percent in its BAFO.

¹ Sikorsky is a division of United Technologies Corporation.

PROTEST AND RESPONSE

Chromalloy alleges that ATCOM released its interim price to Sikorsky which enabled that firm to underprice the protester. Chromalloy predicates this allegation on two events: (1) a May 13 conversation between Chromalloy's director of military operations and the retired head of ATCOM's utility helicopter branch; and (2) the fact that its initial price was contained in the July request for a PAS on the protester which was faxed to Army offices which would perform the PAS.

According to Chromalloy's director of military operations, in the May 13 conversation, the former ATCOM official questioned him about a "rumor" that Chromalloy was planning to supply spindles to Rotair--a small business that was participating on the set-aside portion of the procurement. Chromalloy's employee states that he was concerned because it appeared to him at that time that "somehow the information in Rotair's [solicitation] response has 'leaked' and that if this information has leaked that there is a distinct possibility that pricing information has also leaked out."

The agency explains that its former official had access to the source approval request (SAR) for Rotair in the course of his present employment with an ATCOM technical support contractor but points out that the SAR does not contain pricing information. A copy of the relevant portion of the SAR indicating Chromalloy's willingness to supply Rotair confirms that no pricing information was included. According to the agency, the former ATCOM official states that, if the relationship between the two companies came up in the May 13 conversation, it was simply to express surprise that the firms were working together; he denies having any knowledge of Chromalloy's pricing.

With respect to the request for a PAS on Chromalloy, the protester states that it received a copy on July 28 and was astonished to discover that its initial price was written on the request. The protester then alleges "[o]n information and belief" that the PAS request was faxed to numerous ATCOM and Department of Defense offices through "numerous secretaries and clerical personnel at ATCOM." Chromalloy concludes that "[a]ll of these transmissions and the dissemination of [its] pricing information occurred prior to the closing date for return of BAFO's," and that "[a]ny competitor . . . who, by accident or design, was permitted by the government to review Chromalloy's pricing would have had more than sufficient time to adjust its BAFO price prior to the August 4, 1994 due date."

In response, the agency reports that the PAS request was sent only to authorized officials in ATCOM and the Defense Contract Management Area Office (DCMAO) which were required to provide input concerning the firm's responsibility--including its financial capability. Officials from each office have submitted statements reporting that no unauthorized disclosures occurred.

ANALYSIS AND CONCLUSION

This protest is untimely. The grounds for protest were known to Chromalloy as early as the May 13 conversation upon which the protester relies and no later than July 28 when the firm received its copy of the PAS request from DCMAO. Protests relying on grounds other than alleged apparent solicitation improprieties must be filed within 10 working days of the time when the protester learned of the grounds. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1994). Since Chromalloy waited until September 26 to file its protest, it is dismissed as untimely.

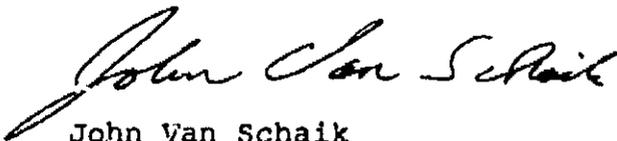
Even if we were to consider the protest to be timely, we note that a protest is required to set forth a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4), and a failure to state a valid basis of protest is grounds for summary dismissal, 4 C.F.R. § 21.3(m). A protest based on mere speculation unaccompanied by convincing supporting evidence does not meet the standards set forth in our Regulations and is insufficient to provide a basis for sustaining a protest. See American Identification Prods., Inc., B-227599, July 13, 1987, 87-2 CPD ¶ 42.

Chromalloy's protest consists solely of speculation and inference which is not supported. The record shows that the retired official with whom the Chromalloy representative spoke on May 13 was authorized to review Rotair's SAR and that the SAR contained no pricing information--which is logical since the subject matter of the SAR is technical in nature and is unrelated to price. Thus, the protester's reliance on the conversation, which itself at best concerned a "rumor," to conclude that pricing information had been released to Sikorsky is totally unsupported. Likewise, authorized intra-agency distribution of the PAS request (containing price information in a space provided for that purpose to aid in determining financial responsibility) does not support an inference that the agency disclosed prices to Chromalloy's competitors.

With respect to Sikorsky lowering its interim price by less than 3 percent in its BAFO, such a reduction is a relatively

common occurrence² which is insufficient itself to support a conclusion that the agency disclosed the protester's price. EG&G Washington Analytical Servs. Center, Inc., B-242149, Apr. 4, 1991, 91-1 CPD ¶ 349. Moreover, if the point of Chromalloy's protest is that the fax transmission of the PAS requests led to Sikorsky having confidential information concerning competitors' prices, then it is logical to assume that Sikorsky also would have had the price of the initially low offeror who was also the subject of a PAS, and further that Sikorsky would have undercut that initially low price, which it did not.

The protest is dismissed.



John Van Schaik
Acting Assistant General Counsel

²Here, two other offerors submitted greater price reductions in their BAFOs.