



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Mil Colores, S.A.

File: B-270208

Date: February 16, 1996

Carlos A. De Obaldia for the protester.

Philip T. McCaffrey, Esq., and Nicholas P. Retson, Esq., Department of the Army, for the agency.

John A. Carter, Esq., and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the decision.

DIGEST

1. Protest that the Army conducted a prohibited auction is denied where there is no evidence that the Army engaged in any activity that would constitute an auction, such as indicating to an offeror a price it must meet in order to receive further consideration, advising an offeror of its relative standing or furnishing information about other offerors' prices.
 2. Protest that agency awarded contract on basis of low price without evaluating awardee's capability to comply with solicitation requirements is denied. Where a solicitation provides for award to the lowest-priced offeror and does not provide for a technical evaluation or require a technical proposal, award to the lowest-priced responsible offeror is proper.
-

DECISION

Mil Colores, S.A. protests the award of a contract to CBH Construcciones, S.A. (CBH) under request for proposals (RFP) No. DAHC92-95-R-0099 issued by the United States Army Garrison-Panama.

We deny the protest.

The Army issued the RFP to consolidate current requirements for custodial, refuse and grounds services for Fort Sherman, Panama, for 5.5 months, with an option for another 6 months. The RFP stated that the Army intended to award a single contract to the responsible offeror "whose total aggregate price is determined to be in the best interests of the United States Government." The solicitation provided a price schedule to be filled in by the offeror. No technical proposal was solicited and the RFP contained no technical evaluation criteria by which a proposal might be evaluated. The RFP also stated that the Army intended to award on the basis of initial proposals without discussions.

Mil Colores submitted the initial proposal with the lowest aggregate price. Based upon this proposal, the Army initiated a pre-award survey of Mil Colores. Before award, however, the Army concluded that some of the work estimates in the RFP were incorrect, and issued a request for best and final offers (BAFO) to all of the participating offerors, with revised estimates. This time, CBH submitted the lowest aggregate price. The contracting officer, relying primarily on a recent pre-award survey of CBH conducted in another procurement for similar services, and on CBH's record of successful past performance of government contracts, determined CBH to be responsible and awarded the contract to the firm.

Mil Colores contends that the Army conducted a prohibited auction for this contract. It argues that the use of auction techniques can be inferred from the Army's actions.¹

Prohibited auction techniques include such actions as (1) indicating to an offeror a price it must meet in order to receive further consideration; (2) advising an offeror of its relative standing; and (3) furnishing information about other offerors' prices. Federal Acquisition Regulation § 15.610(e)(2). There is no evidence in the record, and Mil Colores has provided none, that the Army engaged in any of these activities. The mere fact that CBH's price was the lowest in response to the request for BAFOs or that BAFOs had to be solicited to fix a problem in the initial solicitation do not indicate that the agency engaged in a prohibited auction. Since the record does not support Mil Colores's allegations, this ground of protest is denied. See Behavioral Science Consulting, B-258777; B-258777.2 , Feb. 13, 1995, 95-1 CPD ¶ 72.

Mil Colores also contends that the Army deviated from the evaluation criteria set forth in the solicitation by conducting an extensive "examination" of Mil Colores's ability to comply with the statement of work in section C of the RFP, while awarding the contract to CBH solely on the basis of price without conducting a similar examination of that firm's capabilities. Mil Colores argues that an examination of CBH's ability to perform was required by the RFP and was not merely a matter of responsibility. In support of its argument, Mil Colores relies on a statement in the RFP executive summary that: "Additionally, in order to be considered for an award, offeror shall comply with section C, and other terms/conditions contained in the solicitation." Section C of the RFP consists of

¹In its initial protest to our Office, Mil Colores also contended that CBH lacked the capability to perform this contract and that CBH's lower price was unbalanced and unsupported. The Army addressed these allegations in its report on the protest, and Mil Colores did not respond to the Army's position on these issues. We therefore consider Mil Colores to have abandoned these allegations. See D & M Gen. Contracting, Inc., B-259995; B-259995.2, May 8, 1995, 95-1 CPD ¶ 235.

post-award quality control requirements and a general requirement for compliance with other terms and conditions of the RFP.

We find no merit in this contention. As we observed above, the RFP provided that award would be made to the firm offering the lowest aggregate price and neither required a technical proposal, in which an offeror might demonstrate how it intended to comply with section C of the RFP, nor provided evaluation criteria by which a technical proposal or an offeror's capabilities might be measured. In these circumstances, the submission of a proposal amounts to an offer to perform in accordance with the specifications, and no additional assessment of the offeror's capabilities is required beyond that necessary to establish responsibility. Louisville Cooler Mfg. Co., B-243546, June 13, 1991, 91-1 CPD ¶ 568; Berema, Inc.--Recon., B-239212.2, Nov. 1, 1990, 90-2 CPD ¶ 356. Where a solicitation provides for award to the lowest-priced offeror and does not provide for a technical evaluation or require a technical proposal, award to the lowest-priced responsible offeror is proper. Colt Indus., Inc., B-231213.2, Jan 23. 1989, 89-1 CPD ¶ 49.

The protest is denied.

Comptroller General
of the United States