



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Minotaur Engineering

File: B-276843

Date: May 22, 1997

Kevin Recker for the protester.

Dennis Foley, Esq., Philip Kauffman, Esq., and Phillipa L. Anderson, Esq.,
Department of Veterans Affairs, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Exception to 10-day period for filing a protest pursuant to 4 C.F.R. § 21.2(a)(2) (1997), where protester challenges a procurement conducted on the basis of competitive proposals where a debriefing is requested and, when requested, is required, does not apply where protester does not timely request required post-award debriefing as contemplated by statute and regulation.

DECISION

Minotaur Engineering protests the award of a contract to Televoice, Inc. under request for proposals (RFP) No. 516-048-97, issued by the Department of Veterans Affairs (VA) for a toll-free integrated voice response system using dual tone multi-frequency signaling to disseminate information on VA-acquired properties in Florida.

We dismiss the protest.

Section B of the RFP required that offerors submit a price for a one-time charge for applications, development, and set up; a unit and a total price for service charges for a base period of 6 months; unit and total prices for each of two 1-year option periods; and a grand total price. Section M of the RFP listed the following evaluation factors in descending order of importance: total cost; capability; and qualifications, and stated that award would be made to the offeror whose proposal received the "highest combined score" based on the evaluation of proposals.

On April 7, 1997, Minotaur received the VA's "NOTICE OF AWARD" letter stating as follows:

"Based on the offers received in this office on March 12, 1997, award is made to Televoice Inc. of Houston, Texas, in the amount of \$4,800.00 [for the base period]. . . .

"The offer which was submitted by [Minotaur] has been rejected. This was necessary since the [standard form] (SF) 33 (Solicitation, Offer and Award) was not returned nor were there any documents provided indicating that [Minotaur's] proposal was a binding offer."

On April 17, Minotaur requested a copy of the abstract of offers; the contracting officer furnished the abstract on April 18.

Minotaur filed this protest in our Office on April 23, challenging the rejection of its proposal. The protester also asserts that the award to Televoice at a total price higher than Minotaur proposed was improper.

Under our Bid Protest Regulations, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1997). The VA's "NOTICE OF AWARD" letter clearly informed Minotaur why the VA rejected its proposal, thus providing Minotaur with a basis for protest. Since it is undisputed that Minotaur received that letter on April 7, to be timely, Minotaur was required to have filed its protest no later than 10 days after that date, or by April 17. Minotaur's protest, filed in our Office on April 23, is therefore untimely, and will not be considered.¹

Minotaur argues that its protest is timely pursuant to the exception to the 10-day timeliness rule for filing protests challenging a negotiated procurement provided for in 4 C.F.R. § 21.2(a)(2), which states:

"Protests other than those covered by paragraph (a)(1) of this section shall be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier), with the exception of protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. In such cases, with respect to any protest basis which is known or should have been known either before or as a result of the debriefing, the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed

¹Minotaur argues that we should consider its protest under the significant issue exception to the timeliness rules. 4 C.F.R. § 21.2(c). The significant issue exception will be invoked only where the protest involves issues of first impression that would be of widespread interest to the procurement community as a whole. The VA's rejection of Minotaur's proposal, while of interest to the protester, does not present a significant issue of widespread interest to the procurement community.

not later than 10 days after the date on which the debriefing is held."
(Emphasis added.)

Minotaur contends that its request for the abstract of offers should be considered a debriefing request, which, under this provision, extended the period for filing its protest challenging the rejection of its proposal. Minotaur argues, therefore, that its protest, filed on April 23, within "10 days after the date on which the debriefing [was] held"--i.e., after the date it received the abstract of offers--should be considered timely. We disagree.

As expressly stated in our Regulations, the extension to the 10-day period for filing protests in our Office challenging a negotiated procurement applies only where "a debriefing is requested and, when requested, is required." Under Federal Acquisition Regulation (FAR) § 15.1004 (FAC 90-37), which implements 41 U.S.C. § 253b(e) (1994), a "required debriefing" is one resulting from a written debriefing request "received by the agency within three days after the date on which that offeror has received notice of contract award." If such a request is timely received by the agency, the offeror must then be debriefed and furnished the basis for the selection decision within 5 days of the agency's receipt of the request, if practicable.

In order to encourage early and meaningful debriefings and to preclude strategic or defensive protests--i.e., protests filed before actual knowledge that a basis for protest exists or in anticipation of improper actions by the contracting agency, our Office will not consider a protest challenging a procurement conducted on the basis of competitive proposals where a debriefing is "requested and required," if the protest is filed before the debriefing date offered to the protester--even where the protest basis was known before the debriefing. The Real Estate Center, B-274081, Aug. 20, 1996, 96-2 CPD ¶ 74 at 2. As Minotaur correctly points out, under those circumstances, the protest instead should be filed not later than 10 days after the date on which the debriefing is held. Id. Offerors thus preserve the right to raise a protest issue, the basis of which they may have known prior to the debriefing, without disrupting the procurement or unduly delaying the bid protest process in our Office.

As a preliminary matter, Minotaur did not submit a written request for a debriefing, but only requested the abstract of offers. Additionally, FAR § 15.1004(d) sets forth the minimum information that agencies are required to provide in a debriefing, including, for example, the government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal; a summary of the rationale for the award; and reasonable responses to relevant questions concerning the source selection procedures. In our view, the abstract of offers standing alone, particularly in the context of a best value procurement, cannot reasonably be construed as a "debriefing" as contemplated by the FAR.

In any event, even assuming that Minotaur's request for the abstract of offers was tantamount to a written debriefing request, and that the abstract of offers could be considered the VA's "debriefing," Minotaur did not properly preserve its right under our Bid Protest Regulations to challenge the rejection of its proposal.

Minotaur's request for the abstract of offers was received by the agency on April 17, more than 3 days after April 7, when Minotaur received the notice of award letter. Accordingly, the VA's "debriefing" was not a "required debriefing" under the FAR. Minotaur's receipt of the abstract of offers, therefore, did not trigger an extension to the 10-day timeliness rule under 4 C.F.R. § 21.2(a)(2). Minotaur's protest challenging the rejection of its proposal is thus untimely.²

The only timely issue Minotaur raised in its protest is the contention that award to Televoice at a total price higher than Minotaur proposed was improper, since Minotaur learned of that total price when it received the abstract. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C.A. §§ 3551-3556 (West Supp. 1997), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). Since Minotaur failed to timely challenge the rejection of its proposal, we have no basis for objecting to the rejection. Minotaur thus would not be in line for award even if its protest concerning award to Televoice at a higher total price than Minotaur proposed were sustained;

²Our conclusion that Minotaur's challenge to the VA's rejection of its proposal is untimely does not mean that an offeror that fails to timely request a "required debriefing," as described above, loses its right to file a timely protest in our Office based on information learned as a result of a debriefing. In this regard, FAR § 15.1004(a) states that "[w]hen practicable, debriefing requests received more than three days after the offeror receives notice of contract award shall be accommodated." An offeror that learns the basis for protest as a result of such a non-required briefing is not precluded from subsequently filing a timely protest based on information learned at that debriefing.

Minotaur therefore lacks the direct economic interest required to maintain the protest on this ground.³ Custom Training Aids, Inc., B-241446.2, Feb. 12, 1991, 91-1 CPD ¶ 151 at 4.

The protest is dismissed.

Comptroller General
of the United States

³In any event, in a negotiated procurement, unless the RFP so specifies there is no requirement that award be based on lowest price. Stewart-Warner Elecs. Corp., B-235774.3, Dec. 27, 1989, 89-2 CPD ¶ 598 at 9. Here, the RFP clearly stated that award would be made to the offeror whose proposal received the highest combined numerical score based on the evaluation of technical factors and price. Thus, the fact that Minotaur learned that it had submitted the lowest total proposed price after it received the abstract of offers, or that historically the agency has awarded similar contracts on the basis of the lowest total proposed price as the protester contends, does not provide a valid basis for protest.