

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

Proc II

10,595

FILE: B-194047

DATE: June 27, 1979

MATTER OF: Colonial Ford Truck  
Sales, Inc.

DLC 01950

## DIGEST:

*Protest Alleging*

1. Mere speculation that agency improperly disclosed price information to eventual successful offeror is rejected in absence of evidence of price leak. GAO does not conduct investigations to establish validity of such speculative statements.
2. Protest that RFP's evaluation criteria were deficient, filed after closing date for receipt of initial proposals, is untimely and will not be considered on the merits.

DLC 01951

Colonial Ford Truck Sales, Inc. (Colonial) protests the award of an indefinite delivery type contract to Cummins Central Ohio, Inc. (Cummins) under request for proposals (RFP) DLA 700-79-R-7007, issued by the Defense Construction Supply Center, Columbus, Ohio (the agency). Colonial contends that because the agency determined beforehand that it would not award the contract to Colonial, the award was improperly made to another offeror.

AGC 891

Colonial's contention stems from its belief that it submitted the lowest offer and therefore should have been awarded the contract. Colonial states that, in connection with a request for preaward survey, it was informed that it was the low offeror. The protester further states that on January 9, 1979, after receipt of best and final offers, someone at the contracting office confirmed Colonial's status as low offeror.

The contract, however, was awarded to Cummins on January 29 as a result of the agency's determination that Cummins' offer was lowest. As evaluated by the agency, the best and final offers were:

005717

	<u>Zone A</u>	<u>Zone B</u>
Colonial	\$804,717.08	\$215,066.17
Cummins	\$803,379.17	\$214,541.18

Colonial further suggests that the agency may have disclosed Colonial's offer to Cummins since that firm revised its price downward just enough to displace Colonial. The protester speculates that since the agency released information to Colonial about the status of its offer, Cummins also could have received information from the agency and could have used it to prepare its best and final offer. In addition, although the date set for receipt of best and final offers was the same for all offerors, Colonial alleges that the agency did not contact Cummins for a best and final offer until after Colonial's best and final offer had been received. Colonial requests that we conduct an investigation to determine whether its price was leaked to its competition.

We do not conduct investigations pursuant to our bid protest function for the purpose of establishing the validity of the protester's speculative statements. The protester has the burden to affirmatively prove its case. M & H Mfg. Co., Inc., B-191950, August 18, 1978, 78-2 CPD 129.

The agency is prohibited from releasing, to the public or to anyone within the Government not legitimately interested, information in any proposal prior to acceptance of the winning offer. DAR § 3-507.2(a) (1976 ed.). The agency denies any improper disclosure of Colonial's price, and the record contains no evidence to support Colonial's allegations. The agency also denies that it requested a best and final offer from Cummins after receipt of Colonial's best and final offer. It states that it requested final offers from both offerors on December 19. On this point, however, the record is in conflict, as Cummins indicates that it received the best and final request on December 21. (Colonial submitted its offer on December 20.) Even if Cummins was asked to submit a best and final offer after Colonial's offer was received, this does not establish that the protester's price information was leaked. Neither does the fact that the successful offeror reduces its price in the course of making its best and final offer

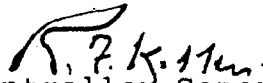
establish that the protester's price had been revealed. Nuclear Research Corporation, B-189790, February 22, 1978, 78-1 CPD 147. In the absence of more probative evidence, we view the protester's allegations as speculative and can only conclude that Colonial has not met its burden of proof.

Colonial also contends that the agency improperly evaluated the offerors' prices by 1) not considering the cost of changing contractors, and 2) using estimated transportation costs. These objections to the evaluation procedure are untimely. The evaluation criteria, which are clearly set out in the RFP, do not require the agency to consider the cost of changing contractors. The RFP also provides an objective method of estimating transportation costs. Our Bid Protest Procedures require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to that date. 4 C.F.R. § 20.2(b)(1) (1979). As Colonial did not object prior to the closing date for receipt of initial proposals, this basis for protest will not be considered on its merits.

Colonial states that "with any change" in the estimated transportation costs, Colonial's offer might have been lowest. Colonial does not specifically allege that the evaluation of the transportation costs applied to its proposal was erroneous. However, if by this statement Colonial suggests that the agency did not compute the transportation costs in a manner consistent with the RFP, we note that the record contains no evidence to support this allegation.

Finally, Colonial alleges the existence of other improprieties, but we do not see how they could have been prejudicial to Colonial since the agency made award solely on the basis of price and Colonial was not the low offeror.

The protest is denied.

  
Acting Comptroller General  
of the United States