

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

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FILE: B-211817

DATE: August 29, 1983

MATTER OF: Spacesaver Systems, Inc.

DIGEST:

1. Protest that small business offeror allegedly will supply items manufactured by a large business does not make offeror ineligible for award since procurement was not restricted to small businesses.
2. Protest against failure to set aside procurement for small business concerns is untimely under GAO Bid Protest Procedures since protest was filed after closing date.
3. Protest against alleged improprieties in solicitation, not existing in the initial solicitation, but subsequently incorporated therein, is untimely where not protested before the next closing date for receipt of proposals. See 4 C.F.R. § 21.2(b)(1) (1983).
4. Whether an awardee's product conforms to the contract requirements is a matter of contract administration, which is the responsibility of the procuring agency and not GAO.

Spacesaver Systems, Inc. (SSI), protests the award of a contract to Remco Business Systems, Inc. (RBS), under request for proposals (RFP) No. 83A-160, issued by the Central Intelligence Agency (CIA). SSI questions whether RBS's proposal will meet all RFP specifications. SSI asserts that the various amendments to this RFP during the course of the procurement resulted in a preference for the awardee's product. SSI also contends that the RFP should have been set aside for small businesses and that RBS falsely certified in its proposal that it was offering a small business manufacturer's product. By letter of July 21, 1983, the protester withdrew its protest of two other issues.

We dismiss the protest in part and deny it in part.

This RFP, issued on February 25, 1983, was for specialized mobile shelving for the CIA's office of security. On

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April 19, 1983, four offerors timely submitted initial proposals. The CIA evaluated the proposals and found all were inadequate and incomplete. Discussions were held with all four offerors. Revised proposals were submitted on May 9, 1983, but the four responses again were determined deficient in satisfying the CIA's requirements. On May 10, 1983, amendment No. 6 was issued (five other amendments previously had been issued, but are not at issue here). Amendment No. 6 requested that bidders conform to the mandatory specifications contained in the RFP. A new deadline of May 12, 1983, was set for submission of best and final offers. The amendment also modified the specifications to permit 20-gauge steel shelving. On May 12, 1983, best and final offers were submitted, but the proposals were found not to meet the mandatory specifications. Subsequently, amendment No. 7 was issued which relaxed the shelving installation schedule, clarified a specification and advised that carpeting would be Government furnished. On May 25, the four offerors submitted new best and final offers. The CIA found that all offers were technically acceptable. The contracting officer awarded the contract to the low priced offerer, RBS.

Initially, SSI protests that the CIA failed to consider that RBS would supply large business products and, thus, should not be considered a small business. Accordingly, SSI contends RBS was not an eligible small business under this RFP. However, since the RFP was unrestricted, RBS's manufacturer's alleged status as a large business does not render RBS ineligible for award under the RFP, and this protest allegation is denied. Cf. Technical Services Corporation; Artech Corporation, and Sachs/Freeman Associates, Inc., B-190945, B-190970, B-190992, August 25, 1978, 78-2 CPD 145.

Regarding SSI's contention that the procurement should have been set aside for small businesses, the RFP did not restrict the procurement to small businesses and, therefore, SSI was on notice that the RFP was unrestricted. Under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), protests based upon alleged improprieties in an RFP which are apparent prior to the closing date shall be filed prior to the closing date. Consequently, SSI's protest against the failure to set aside the solicitation is untimely since

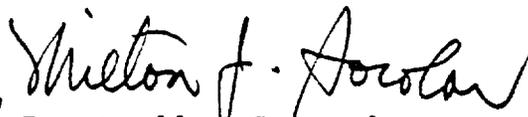
it should have been made prior to the closing date. Therefore, this issue will not be considered on the merits. See J.H. Rutter Rex Manufacturing Company, Inc., B-184157, February 23, 1976, 76-1 CPD 122.

Also, SSI's allegation that certain amendments, specifically amendment No. 6, to the RFP favored the eventual awardee is untimely. Our Bid Protest Procedures require that alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated therein, must be protested not later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2 (b)(1) (1983); Francis O. Stebbins & Robert A. Dunaway, B-209460, March 1, 1983, 83-1 CPD 212. Amendment No. 6 was issued May 10, 1983, and advised that the next cutoff date for best and final offers was May 12, 1983. Amendment No. 7, the last RFP amendment, was issued on May 19, 1983, and revised best and finals were submitted on May 25, 1983. SSI did not raise this protest issue until July 21, 1983, after the relevant closing dates and the issue therefore is untimely filed.

SSI also questions whether RBS will comply with the RFP specifications in performing the contract. Specifically, SSI argues, based apparently on SSI's interpretation of RBS's descriptive literature, that RBS, in performing the contract, will not meet the specification requirement for a 20-foot aisle and also for a 30-inch center aisle. The record shows the CIA evaluated RBS's final proposal and found it was technically acceptable and met all mandatory specifications.

In essence, SSI is questioning whether RBS will ultimately supply an item conforming to the contract requirements and this issue is a matter of contract administration which is the responsibility of the procuring agency and not this Office. Control Technology Co., Inc., B-210860, March 14, 1983, 83-1 CPD 254.

We dismiss the protest in part and deny it in part.

for 
Comptroller General
of the United States